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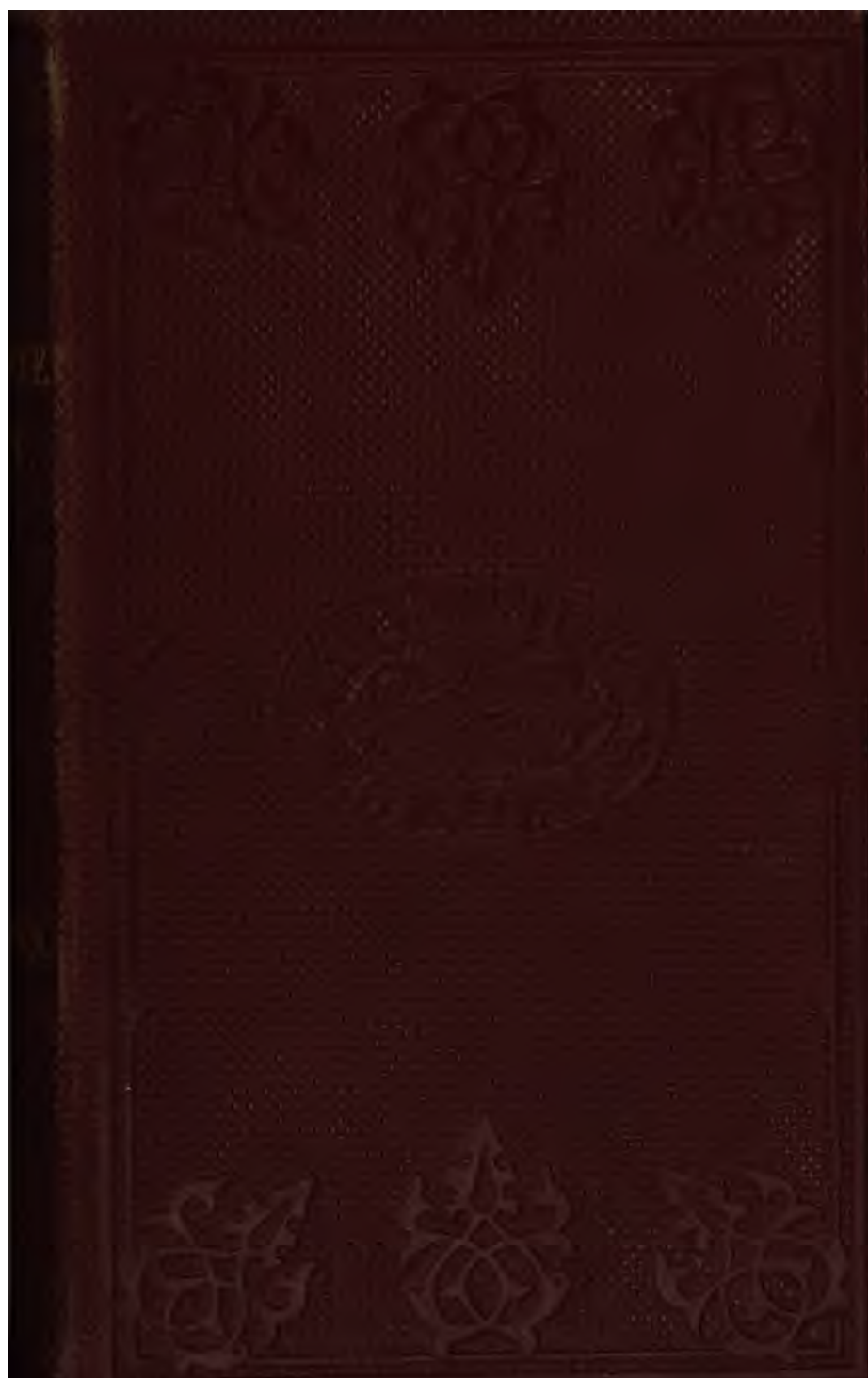
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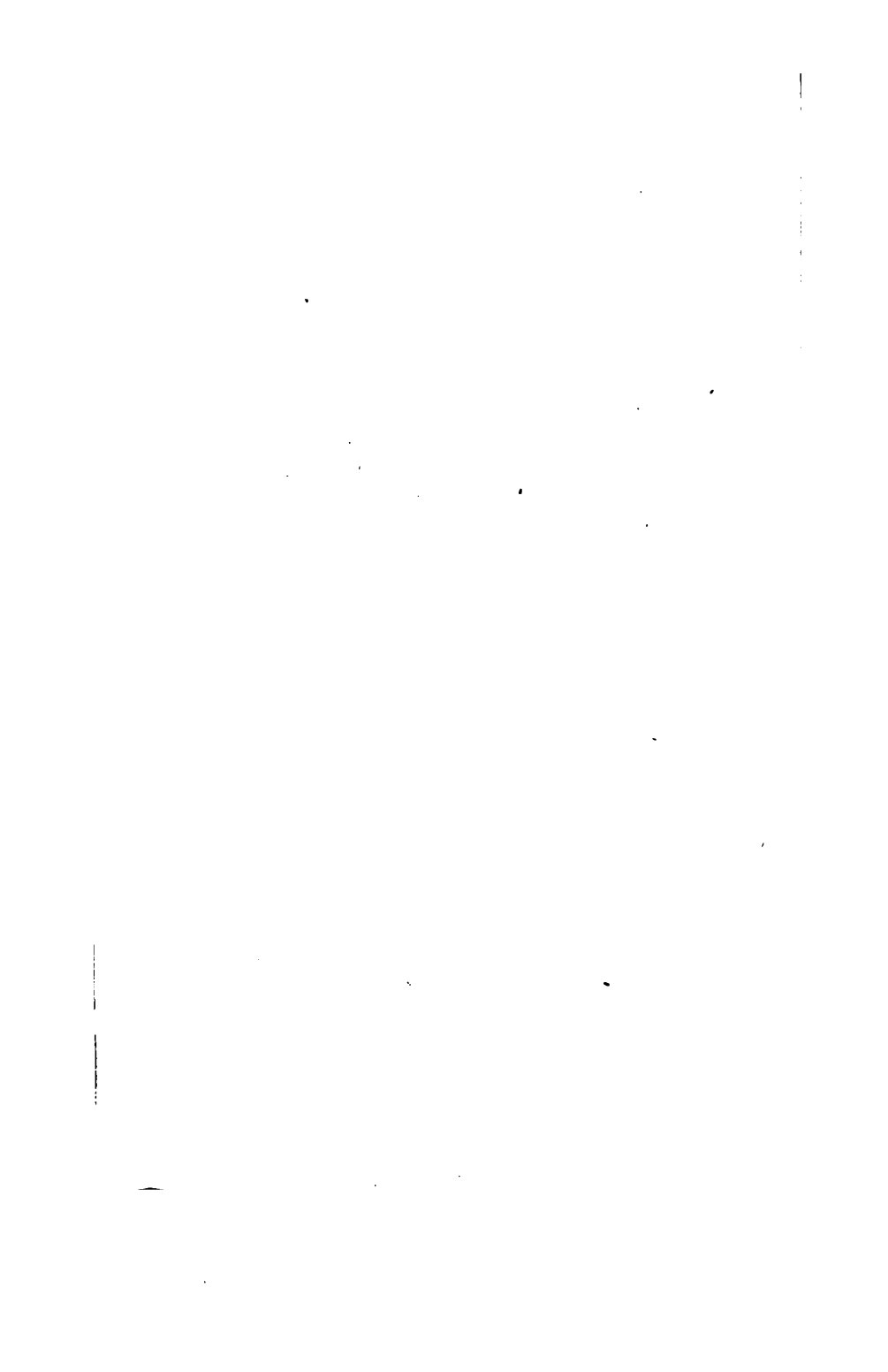
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THE
PRACTICE
OF
PROBATE AND ADMINISTRATION

UNDER
20 & 21 VICT., CAP. 77,

TOGETHER WITH
The Statute,
AND
AN APPENDIX,

CONTAINING THE
RULES AND ORDERS ISSUED BY THE COURT OF PROBATE,
AND THE TABLES OF FEES.

BY
CHARLES WYCLIFFE GOODWIN, M.A.,

Of Lincoln's Inn, Barrister-at-Law;

LATE FELLOW OF ST. CATHERINE'S HALL, CAMBRIDGE; EDITOR OF "THE COPYHOLD
ENFRANCHISEMENT ACTS," AND "THE SUCCESSION DUTY ACT."

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PRACTICE OF PROBATE AND ADMINISTRATION.

CHAPTER I.

INTRODUCTORY.

When a person dies leaving a will disposing of his personal estate, and naming therein an executor to carry his disposition into effect, before the executor can administer the testator's effects, it is necessary for him to prove, or establish the validity, of the will. He may indeed do some acts relating to the property immediately upon the testator's death, and before he has proved the will in the way pointed out by the law; such as taking possession of any of the testator's effects upon which he can lay hands, paying and taking acquittances for debts owing to the estate, and receiving and releasing debts owing to it. These acts will hold good, although he afterwards die without having proved the will, for it is upon the will that his title and authority is based. But when it is necessary to give evidence of his title and authority, he can only do so by production of the *probate* of the will, which is a copy of it, certified (formerly by the seal of the ordinary, but now under the recent act) by the seal of the Court of Probate. This copy thus authenticated is the only evidence which the law allows of the will in any question respecting personality.

If a person dies possessed of personal property, but without leaving a will, no person can legally take possession of his effects, or deal with them in any way, without first obtaining authority so to do (formerly from the ordinary, but now under the recent act) from the Court of Probate. This authority is conferred by letters of administration, which are

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granted according to well established rules, to the person most interested in the distribution of the goods of the intestate, generally his next of kin, and the authority of the administrator springs and dates from the grant thus obtained, unlike that of the executor which is merely evidenced by, and not founded upon, the probate.

In cases where a person dies leaving a will of personality, without naming an executor, or if an executor be named and he decline the office, it becomes necessary for some person to obtain the right of administration *cum testamento annexo*, that is, an authority to deal with the testator's goods according to the will. This is usually granted to the residuary legatee named in the will, and sometimes to the testator's next of kin.

Other species of administration exist, as administration *de bonis non*, when a previous executor or administrator has died, without administering fully the whole of the deceased's goods; administration *pendente lite*, when the right to administration is in controversy, and the estate might suffer from having no authorized guardian; and administration for temporary and limited purposes.

The right of administering the personal estates of deceased persons is theoretically supposed to have resided originally in the Crown, but was in early times conferred upon the church; and, previous to the passing of the recent act, the ordinary, or ecclesiastical superior of the place where the testator or intestate dwelt, usually the bishop of the diocese, was the person in whom the power of granting probate and letters of administration was vested. A number of ecclesiastical districts, however, exist exempt from the jurisdiction of the common ordinary. These are called Peculiars, and the special ordinaries of such districts possessed the right of probate and administration within their limits. In some manors the lords had, by prescription, a similar right. If, however, a person died possessing personal property in more than one diocese or peculiar, then the metropolitan, or archbishop of the province where the goods lay, had, by special prerogative, the right of probate and administration. To found this prerogative, the goods in question must have been of *notable* value, a term which was long ago fixed to mean of the value of at least *5l.* Such goods were called *bona notabilia*, and owing to the nature of modern property, in a vast number of cases the Prerogative Courts of the Archbishops of Canterbury and York, particularly the former, were enabled to claim the right of probate and administration.

The various courts which had the right of granting probate and administration, had the right of entertaining suits concerning wills of personalty and administration when any controversy existed. An appeal lay generally from one court to that immediately above it. From an Archdeaconry Court an appeal lay to the Bishop of the diocese. From the court of a Bishop or a Peculiar it lay to the Prerogative Court, that of the Archbishop of the province. From a Royal Peculiar the appeal lay to the Sovereign directly in the High Court of Delegates. The Court of Arches held jurisdiction of the thirteen peculiars in the city of London, of which the Archbishop of Canterbury himself is the ordinary. The principal official of this court, called the Dean of Arches, had also jurisdiction throughout the province of Canterbury, for receiving appeals from the sentences of inferior ecclesiastical courts.

From the Archbishops' Courts an appeal formerly lay to the superior Court of Delegates (or special royal commissioners) but this jurisdiction was, by stat. 2 & 3 Will. 4, c. 92, transferred to the Judicial Committee of the Privy Council.

This complex system has now been exchanged for one of great simplicity. The recent act (sect. 3) abolishes the jurisdiction, both voluntary and contentious, of "all ecclesiastical, royal peculiar, peculiar, manorial, and other courts and persons in England," in all matters relating to probate and administration, and resumes to the Crown the whole of such jurisdiction, which is to be exercised in Her Majesty's name in a court styled the Court of Probate. From this court appeal lies at once to the House of Lords. The date from which this alteration commences is the 11th of January, 1858, that day, the commencement of Hilary Term, having been appointed by an Order of Her Majesty in Council, in compliance with 1st section of the act.

The constitution of the Court of Probate and its dependencies, so far as they are defined by the act, it will be our business to describe in the following chapter.

CHAPTER II.

THE COURT OF PROBATE.

The court.—The Court of Probate holds its ordinary sittings in London or Middlesex in such place as Her Majesty in Council may appoint: (sect. 4.) By an order of council lately issued, the sittings of the court are to be held in Westminster Hall.

The judge.—The court is presided over by a single judge, who must have been an advocate of ten years standing, or a barrister-at-law of fifteen years standing. He holds office during good behaviour, but may be removed from his office upon the petition of both Houses of Parliament. The judge of the Court of Probate holds rank with the puisne judges of the common law courts; he has a secretary and an usher whom he appoints, and may remove at pleasure: (sects. 5, 6, 8.) The act contemplates the future union of the offices of judge of the Court of Probate and judge of Court of Admiralty: (sect. 10.) The judge of the Court of Probate is also the judge ordinary of the Court of Divorce and Matrimonial Causes, established by the act 20 & 21 Vict. c. 85: (see sects. 8 and 9 of that statute.)

Principal registry.—The Principal Registry of the court is to be situate in London or Middlesex, in such place as Her Majesty in Council shall from time to time appoint: (sect. 4.) The building hitherto used for the registry of the Prerogative Court of Canterbury, No. 6, Great Knight-riding Street, is now the registry of the Court of Probate. The act vests the property of the building in the registrars for the time being: (sect. 108.)

Officers.—The officers attached to the court and principal registry, are three registrars, two record keepers, a sealer, and a clerk of the papers: (sect. 14), other officers and clerks may be appointed, if necessary, by the judge, with the sanction of the Commissioners of the Treasury. The number of registrars may, if it seem expedient, be reduced to two by Order in Council: (*ib.*)

District registries.—Attached to and under the control of the court are forty district registries, the localities of which are specified in schedule A. appended to the act. For convenience of reference, the names of the places are here annexed in alphabetical order.

<i>Place.</i>	<i>District.</i>
Bangor	Counties of Carnarvon and Angelsea.
Birmingham ..	County of Warwick (including the City of Coventry.)
Blandford ...	County of Dorset (including the Town of Poole.)
Bodmin	County of Cornwall.
Bristol	Bristol and Bath present County Court Districts.
Bury St. Edmunds	Western Division of the County of Suffolk.
Canterbury ...	Eastern Division of the County of Kent (including the City of Canterbury and such of the Cinque Ports and their dependencies as are locally situate in the County of Kent.)
Carlisle	Counties of Cumberland and Westmoreland.
Carmarthen ...	Counties of Cardigan, Carmarthen (including the Town of Carmarthen), and Pembroke (including the Town of Haverfordwest.)
Chester	County of Chester (including the City of Chester.)
Chichester ...	Western Division of the County of Sussex.
Derby	County of Derby.
Durham	County of Durham.
Exeter	County of Devon (including the City of Exeter.)
Gloucester ...	County of Gloucester (including the City of Gloucester), except the present Bristol County Court District.
Hereford	Counties of Radnor, Brecknock, and Hereford.
Ipwich	Eastern Division of the County of Suffolk, and North Division of the County of Essex.
Lancaster ...	County of Lancaster, except the Hundred of Salford and West Derby, and the City of Manchester.
Leicester	Counties of Leicester and Rutland.
Lewes	Eastern Division of the County of Sussex (including such of the Cinque Ports and their dependencies as are situate in the county of Sussex.)
Lichfield	County of Stafford (including the City of Lichfield.)
Lincoln	County of Lincoln (including the City of Lincoln.)
Liverpool	Hundred of West Derby in Lancashire.
Llandaff	Counties of Glamorgan and Monmouth.
Manchester ...	City of Manchester and Hundred of Salford.
Newcastle-on-Tyne	County of Northumberland (including the Towns and Counties of Newcastle-on-Tyne and Berwick-upon-Tweed.)

<i>Place.</i>	<i>District.</i>
Northampton..	County of Bedford and Southern Division of Northamptonshire (including the Town of Northampton.)
Norwich	County of Norfolk, (including the City of Norwich.)
Nottingham ...	County of Nottingham (including the Town of Nottingham.)
Oxford	Counties of Oxford (including the University of Oxford,) Berks, and Bucks.
Peterborough..	Northern Division of Northampton and Counties of Euntingdon and Cambridge (including the University of Cambridge.)
Salisbury	County of Wilts.
Shrewsbury ...	Counties of Salop and Montgomery.
St. Asaph ...	Counties of Flint, Denbigh, and Merioneth.
Taunton	Western Division of the County of Somerset.
Wakefield	West Riding of the County of York.
Wells	Eastern Division of the County of Somerset, except the present Bath County Court District, and the part in Somersetshire of the present Bristol County Court District.
Winchester ...	County of Hants (including the Town of Southampton.)
Worcester	County of Worcester (including the City of Worcester.)
York	North and East Riding of the County of York (including the City of York and Ainsty, and the Town and County of Kingston-on-Hull.)

District registrar.—There is one district registrar for each District Registry: (sect. 14.) The principal and district registrar, and other officers, after the expiration of the first appointments made by the act, will be in the appointment of the judge of the court: (sect. 18.) These officers hold their appointments during good behaviour, subject to removal by order of the Lord Chancellor, upon reasonable cause. The inferior officers of the court may be removed by the judge with the sanction of the Lord Chancellor: (sect. 19.)

No person can be appointed a registrar or district registrar who is not either an advocate, barrister-at-law, proctor, solicitor, or attorney-at-law, except at the time of the passing of the act he is performing in person the duties of registrar or deputy-registrar of some ecclesiastical court, or is acting as articulated clerk or paid clerk to a proctor in Doctors' Commons, or as an officer or clerk in the Prerogative

Court of Canterbury or York, or some diocesan court: (sect. 20.)

The registrars, district registrars, officers and clerks of the Court of Probate, must exercise their offices in person and not by deputy; nor can they, while holding office, practise as advocates, barristers, proctors, solicitors, or attorneys, or participate in the fees of any other person so practising: (sect. 21.)

Seals.—The Principal Registry and each District Registry is provided with a seal, by which all probates and other instruments issuing from them are authenticated, and documents purporting to be sealed with any of these seals are receivable in evidence in all parts of the United Kingdom without further proof: (sect. 22.)

Jurisdiction.—The Court of Probate is a court of record, which was not the case with the courts which it has superseded: (sect. 23.) It has the same powers throughout all England, and in relation to the personal estate in all parts of England of deceased persons, as the Prerogative Court of Canterbury formerly had in the province of Canterbury. The power, however, which the ecclesiastical courts possessed of entertaining suits by legatees and next of kin against executors or administrators, for the recovery of legacies or distributive shares, is not conferred on the Court of Probate: (sect. 23.)

Powers of the court.—The court may summon to attend and examine, upon oath or affidavit, any person whom it may think fit, and either *viva voce* or by interrogatories, and may order the production of deeds, evidences, or writings. For these purposes it is armed with writs similar to the writs of *subpœna ad testificandum*, and *subpœna duces tecum*, now used by the courts of Westminster, disobedience to which is a contempt of court, and is punishable by fine, not exceeding 100*l.*: (sect. 24.) The court has also the same power of compelling attendance, punishing contempts, and enforcing its orders, decrees, and judgments as are by law vested in the Court of Chancery for similar purposes: (sect. 25.) (1)

(1) The processes employed by the Court of Chancery are now as follows:

1. *Attachment.*—This is by writ directed to the sheriff commanding him to produce to the court, on a certain day, the party in contempt, or who refuses to appear: (see 1 Dan. Ch. Pr. 314.)

2. *Committal.*—The court may cause the arrest of the party in

Production of testamentary instruments.—Sect. 26 gives the Court of Probate power to require and enforce the production of testamentary writings or papers, where such exist, and to summon and interrogate persons supposed to have such documents within their knowledge or control.

Administration of oaths.—The registrar and district registrars have power to administer all necessary oaths, or take a statutory affirmation or declaration, where the law permits it: (sect. 27.) The same powers are extended to "all persons who at the commencement of the act, shall be acting as surrogates of any ecclesiastical court," and to a class of persons hereafter to be appointed by the judge, who are to be styled "Commissioners of Her Majesty's Court of Probate." Commissioners for taking oaths in the Court of Chancery are also commissioners for taking oaths in the Court of Probate: (sect. 45.) As commissions from the Court of Chancery are already abundant, it is believed that the Court of Probate will not for the present exert its power of giving commissions very extensively.

Rules and Orders.—The act directs the Lord Chancellor, with the advice of the Lord Chief Justice of the Queen's Bench, or some other judge named by him, to frame rules

contempt, by a sergeant-at-arms, an officer of its own. The contemner is then committed to prison to remain there until he chooses to comply with the order of the court: (2 Dan. Ch. Pr. 809.)

3. *Sequestration.*—The two former processes are against the person alone. In case neither the sheriff nor the sergeant-at-arms succeed in arresting the contemner, a commission of sequestration may issue against his real and permanent estate.

A sequestration is a writ or commission issuing under the great seal, and is usually directed to four sequestrators, empowering them to enter upon and seize the whole of the contemning party's real and personal estate, and to detain and keep the same in sequestration until the contempt be cleared: (2 Dan. Ch. Pr. 813.)

4. *Elegit, Fieri facias, and Venditioni exponas.*—The stat. 1 & 2 Vict. c. 110, enlarged the powers of the Court of Chancery, by enacting that its decrees and orders should have the effect of judgments in the superior courts of common law. The effect of this is, that writs of *Elegit, Fieri facias* and *Venditioni exponas* may be founded upon any such decree or order, and such writs have been accordingly adopted by and issued from the Court of Chancery: (2 Dan. Ch. Pr. 797.)

How far these processes, or any of them, may be found necessary and available to the carrying out of the decrees and orders of the Court of Probate remains to be seen.

and orders for regulating the procedure and practice of the court, and the duties of the registrars, district registrars, and other officers, which rules and orders may be hereafter modified by the judge of the Court of Probate with the concurrence of the Lord Chancellor and Lord Chief Justice, or other judge. Subject to such rules and orders, the practice of the court is intended, so far as circumstances will admit, to resemble the old practice of the Prerogative Court of Canterbury. Three codes or sets of Rules and Orders have been already issued by authority, one of which respects the *Contentious business* of the Court of Probate, the others contain instructions for the registrars of the principal and district registries in respect of *Non-contentious business*, with forms and tables of fees.

Business contentious and non-contentious.—Non-contentious business includes all *common form* business, which, by sect. 2 of the act, is defined to mean “the business of obtaining probate and administration where there is no contention as to the right thereto, including the passing of probates and administrations through the Court of Probate in contentious cases when the contest is terminated, and all business of a non-contentious nature to be taken in the court in matters of testacy and intestacy, not being proceedings in any suit, and also the business of lodging caveats against the grant of probate or administration.” To this the instructions to the registrars add, “the warning of caveats,” that is, the business of giving notice to the party lodging a caveat to enter an appearance by a day fixed, on which the cause will be heard.

All other proceedings in the Court of Probate, or in the registries, are deemed *contentious business*: (Rules and Orders in respect of contentious business, Rule 1, and see Rules 6 and 7.) Such are the proving of wills in solemn form, and deciding upon all matters in dispute as to the validity of wills, or the proper person to whom probate or the administration of the effects of the intestate should be granted.

The ecclesiastical courts had the power of entertaining suits for the payment of legacies and distribution of residues. This branch of jurisdiction, as previously mentioned, is expressly withheld from the Court of Probate: (sect. 23.)

Mode of taking evidence.—The act lays down the following general rules as to the mode in which evidence is to be taken in the Court of Probate in contentious cases, subject

to modification by the rules and orders which may be from time to time put forth.

1. The witnesses and, where necessary, the parties, when their attendance can be had, are to be examined orally by or before the judge in open court.

2. The parties may, however, verify their respective cases in whole, or in part, by affidavit.

3. The deponent in every such affidavit may be orally cross-examined in court on behalf of the opposite party, and after cross-examination, re-examined orally in court in behalf of the party filing the affidavit: (sect. 31.)

4. Witnesses out of the jurisdiction of the court, or unable to attend by reason of illness, may be examined by commission on oath, upon interrogatories or otherwise, or (if the witnesses be within the jurisdiction) the examination may be before an officer of the court or other person appointed by the court. The provisions of the acts, 13 Geo. 3, c. 63, and 1 Will. 4, c. 22, by which the courts of law at Westminster are enabled to issue commissions and give orders for the examination of witnesses in suits depending before them, are to be applicable to the Court of Probate: (sect. 32.)

Rules of evidence.—The 33rd section of the act enacts that “the rules of evidence observed in the superior courts of law at Westminster, shall be applicable to, and be observed in the trial of all questions of fact in the Court of Probate.”

The rules of evidence by which the ecclesiastical courts were governed, differed in several respects from those of the courts of common law. Thus, in the former courts, a single witness was, in general, insufficient to prove a fact, although the testimony of one witness if supported by administrative circumstances, might be accepted: (Williams on Executors, pt. 1. bk. 4, ch. 3.)

Interested parties could not be admitted as witnesses in the ecclesiastical courts, as, indeed, was also the rule of the common law, until the statute 6 & 7 Vict. c. 85, enacted, that witnesses should not be excluded, by reason of incapacity from crimes or interest, from giving evidence. The language of this act was apparently large enough to include ecclesiastical as well as common law courts, but a doubt seems to have existed on the subject: (Williams on Executors, pt. 1, bk. 4, ch. 3, s. 5.) The present act seems to remove all question upon the point.

Assistance of common law judge.—The assistance of a

common law judge may be called in by the judge of the Court of Probate, if necessary: (sect. 34.)

Trial by jury, and issue triable at law.—By sect. 35 the Court of Probate is empowered to cause any question of fact to be tried by special or common jury before itself, or to direct an issue to any of the superior courts of common law. When an heir-at-law is concerned, the court is bound, upon his application, to have the case tried by a jury. When an heir-at-law does not make or concur in the application, the judge has a discretionary power, but his refusal to allow the case to be tried by a jury is subject to appeal. The Court of Probate has powers for procuring the trial of a fact by jury, precisely the same as those of the superior courts of law at Westminster for the like purpose: (sect. 36.)

When a question is to be tried by jury before the Court of Probate, the question is to be reduced into writing in such form as the court shall direct; and the powers of the court on such occasions are such as belong to a common law judge sitting at *Nisi Prius*: (sect. 37.)

The court may also direct an issue to be tried before a judge of assize, or at the sittings in London or Middlesex, either by special or common jury: (sect. 38.)

Appeal.—An appeal lies from any final or interlocutory decree or order of the Court of Probate to the House of Lords. But no appeal can be made from an interlocutory order, without leave of the court first obtained. On hearing an appeal from a final decree, all interlocutory orders complained of shall be considered under appeal as well as the decree: (sect. 39.)

Practitioners in the court.—Advocates of the ecclesiastical courts who have been admitted at the time of the passing of the act, 25th August, 1857, may practise as advocates or counsel in *all matters and causes whatsoever* in the Court of Probate. Serjeants and barristers-at-law may practise as advocates or counsel in *contentious* matters (sect. 40), and it would seem in no others. The act at the same time throws the courts of law and equity open to advocates without any restriction. The act makes no provision for the transaction of non-contentious business in open court when the present race of advocates has died out.

Proctors who, at the time of the passing of the act, are actually admitted in the courts of Doctors' Commons, or in

the Prerogative Court of York, or any Diocesan Court, or Archidiaconal Court, and who have duly served under articles of clerkship to an attorney or proctor, may, upon application within one year of the passing of the act, be admitted proctors of the Court of Probate without fee or stamp : (sect. 42.) At the same time the act throws the practice of the courts of law and equity open to persons who, at the time of the *passing* of the act are either acting as registrars or deputy registrars of any ecclesiastical court, or who have been admitted and are practising as proctors in the courts of Doctors' Commons, or any ecclesiastical court : (sect. 43) ; and the same privilege is conferred upon all persons who, at the time of the *commencement* of the act, have served, or are actually serving, as articulated clerks to proctors, but who have not been admitted proctors : (sect. 44.)

All solicitors and attorneys may practise in the Court of Probate : (sect. 45.)

Pending suit.—Suits, whether original or by way of appeal, pending at the time of the commencement of the act (11th January, 1858), respecting any grant of probate or administration, are transferred to the Court of Probate : (sect. 84.) The same section gives discretionary power to the court as to the mode of conducting the suit. An exception is made of proceedings on appeal pending before Her Majesty in Council, which are not transferred to the Court of Probate; moreover, liberty of appeal to Her Majesty in Council is still reserved to those persons who, if the act had not passed, would be entitled to do so.

Cases standing for judgment.—When a cause has been tried, and stands for judgment at the time of commencement of the act (11th January, 1858), the judge who heard it may, within six weeks after the commencement of the act, deliver to one the registrars of the court a written judgment, in pursuance of which a decree or order is to be framed : (sect. 85.) No express provision is made in case the judge should omit to deliver such judgment. In that case the cause would be, it seems, transferred to the Court of Probate, and must be heard again.

Depositories.—There is to be one central place of deposit, situate in London or Middlesex, where original wills, and copies of those preserved in the District Registries, will be kept : (sect. 66.)

Calendars are to be made from time to time of the grants

of probate and administration, both in the Principal and District Registries. The period over which each calendar is to extend is left to be fixed by the judge. The information which these calendars are to contain is as follows:—1. The name of the testator or intestate; 2. The place and time of death; 3. The date of the grant and the registry in which it was made; 4. The names and descriptions of the executors or administrators; 5. The value of the effects: (sect. 67.) These calendars are to be printed, and copies are to be transmitted to the various district registries, to the Prerogative Office in Dublin, and to the office of the Commissary of Midlothian in Edinburgh, where they may be inspected on payment of one shilling for a single search, without reference to the number of calendars inspected: (sect. 68.)

Official copies of wills, in whole or in part, and official certificates of grants of administration are to be furnished by the registrars at fixed rates, which will be found in the list of fees, annexed to the Rules and Orders, issued for the guidance of the registrars, and which are given in the Appendix.

Custody of wills, &c.—All judges and registrars who have hitherto had custody of documents relating to probate and administration, are required to deliver them up to the registrars of the new court on being applied to for that purpose. These documents are to be arranged and made easy of reference, under the direction of the court: (sects. 89, 90.)

Wills of living persons.—Under the old system a will might, during the life of the testator, at his request, be recorded and registered amongst other wills, but no probate could be issued as long as the testator lived: (Swinb. pt. 6, s. 13, pl. 1.) The act enacts that safe and convenient depositories shall be provided for the custody of the wills of living testators, where all persons may deposit their wills upon payment of certain fees: (sect. 91.) This enactment will, perhaps, be found of service to the more prudent classes of the community, who at present sometimes avail themselves of the bankers' or solicitors' fire-proof cupboard for a similar purpose. A will deposited may, of course, be withdrawn as often as it is desired to make an alteration, but the practice would evidently supply a check to capricious alteration.

Fees.—The fees to be taken upon the various proceedings
[P.] C

of the Court of Probate in all its branches, as fixed by the Orders promulgated, are given in the Appendix.

The court fees are to be taken in stamps, not in money, except the fees of the district registrars, and those which are authorized to be taken by proctors, solicitors, attorneys, surrogates, and commissioners of oaths : (sect. 97.)

The presence of the proper stamp is made indispensable to the production of any document in the Court of Probate ; but the judge may order the correction of a mere inadvertent omission : (sect. 99.)

Taxation of costs.—The bills of proctors, attorneys, and solicitors, in all business transacted in the Court of Probate, are to be taxed by one of the registrars of the court, whose certificate may be appealed from to the judge : (sect. 96.)

County Court Jurisdiction.

With regard to probate or administration to persons dying domiciled in any of the registry districts, leaving personal estate (not including property held in trust) which, without deducting debts, is under the value of 200*l.*, and not having a beneficial interest in real estate to the value of 300*l.*, the act confers the contentious jurisdiction and authority of the Court of Probate upon the judge of the County Court in whose district the deceased was domiciled or had his fixed place of abode at the time of his death : (sect. 54.)

The decree made by the County Court judge is certified by the registrar of the County Court to the district registrar, and probate or administration issues accordingly : (sect. 55.)

It is not, however, obligatory to apply for probate or administration through a County Court, though the testator or intestate may have resided in a district. But the Court of Probate may send down to the County Court any contentious matter that has arisen before itself, when the circumstances are such as to give the latter jurisdiction : (sect. 59.)

Powers of County Court judge.—The County Court judge has the like power to decide and enforce his judgment in testamentary cases as in the ordinary actions in his court : (sect. 56.)

Appeal.—Appeal lies from the County Court to the Court of Probate, whose decision is final : (sect. 58.)

Affidavit to found jurisdiction.—In order to found the

jurisdiction of the County Court judge, an affidavit must be made as to the abode and amount of property of the testator or intestate, and this affidavit is absolutely conclusive to found the jurisdiction, though it may prove in the end to be erroneous. If, however, the untruth of the affidavit be discovered and substantiated pending the matter, the County Court judge is bound to stay proceedings and leave the party suing to apply to the Court of Probate, making such order as to costs as the justice of the case requires : (sect. 57.)

Rules and Orders.]—Rules for the procedure of County Courts in testamentary matters may be framed by the board of County Court judges appointed by the stat. 19 & 20 Vict. c. 108, for regulating the practice of these courts : (sect. 60.)

CHAPTER III.

OF PROBATE.

It is the purpose of this chapter to treat of the course to be pursued in obtaining probate under the new act. We are not concerned with the general duties of an executor, nor need we inquire minutely what his rights or powers are independently of probate.

I. *What is to be proved.*

A will disposing of personal estate, whether in conjunction with real estate or alone, requires to be proved before its existence can be recognized by the courts of law and equity. The ecclesiastical courts had, however, no jurisdiction to grant probate of wills not relating in any way to personal estate (*Habergham v. Vincent*, 2 Ves. jun. 230); although as no mischief arose from the practice they seem frequently to have done so. And particularly if there were any doubt in a will relating wholly to land as to whether some part of the property were freehold or not, they were considered bound to grant probate, on the ground that the probate might be of use and could be of no harm: (*Thorold v. Thorold*, 1 Phill. 8.)

The act confers upon the Court of Probate no direct jurisdiction over wills relating wholly to real estate; but it does not appear that the court is bound to refuse probate of such a will. And the provisions of sects. 71, 72, 73, 74, by which, under certain restrictions, the grant of probate by the court is made binding upon the heir and those interested in the realty, are in favour of the opposite conclusion. No penalty, however, can be incurred under the Stamp Act by abstaining from proving a will relating to realty alone.

A will made in execution of a power, if it relate to personality, must be proved: (*Ross v. Bwer*, 3 Atk. 160.)

A will simply appointing testamentary guardians need not be proved: (*Gilliat v. Gilliat*, 3 Phill. 222.)

Previous to the passing of the act 1 Vict. c. 26, documents of a very informal nature might be proved as wills; and regarding wills made before the first day of January, 1838, the old law is still in existence.

The principal rule was that to pass real estate a will must have been in writing, and signed and attested in the manner required by the Statute of Frauds. Three witnesses were requisite, whereas to pass personal estate or leaseholds, any writing was sufficient, though unattested, and in other respects informal.

The act 1 Vict. c. 26, lays down for all wills, whether of realty or personalty, or both, the following rules:—

1. Every will must be in writing, signed at the foot or end thereof by the testator, or by some other person in his presence, and by his direction.

2. The testator's signature must be made or acknowledged in the simultaneous presence of at least *two* witnesses.

3. The witnesses must attest and subscribe the will in the presence of the testator, but no form of attestation is necessary.

It is not, however, the executor's business to decide upon the validity of a will; and, therefore, as a general rule, it will be his duty to propound for probate any document purporting to be testamentary which may come to his hands, and in which he is named executor. The rules laid down by the court for the procedure of the registrars upon the production to them of documents for which probate is claimed, will be given hereafter.

The wills of foreigners or of British subjects dying domiciled out of the jurisdiction of the court, and leaving at the time of death no assets within the jurisdiction of the court, cannot in general need to be proved in this country.

But if the assets should afterwards be transferred to this country, and it be then sought to obtain an account of them, a proper personal representative of the estate must be constituted, under the authority of the Court of Probate here: (*Tyler v. Bell*, 2 Mylne & C. 89.)

And if a foreigner by his will dispose of personalty in this country, the will must be proved here: (*Tourton v. Flower*, 3 P. Wms. 370.) And if a testator die domiciled in Scotland or Ireland, or the East or West Indies, disposing of personalty in this country, the will being first duly proved in the proper court of his place of domicile, on an authenticated copy being transmitted to the Court of Probate here, it may be proved here, and the copy deposited as an original will: (*Toller*, 71.)

In deciding upon the validity of the will of a foreigner brought to this country for probate, the ecclesiastical courts

have been in the habit of following the law of the country where the testator was domiciled (*Curling v. Thornton*, 2 Add. 21); and the same principle extends to the case of a British subject domiciled abroad (*Stanley v. Bernes*, 3 Hagg. 373); and whether in a foreign dominion or in a part of the British dominions not within the jurisdiction of the court: (*Hare v. Nasmyth*, 2 Add. 25.)

As a general rule it has been usual, upon the production of an exemplified copy of the probate granted in the proper court of the country where the deceased died domiciled, for the court here to follow the grant in decreeing probate: (*Larpent v. Sindy*, 1 Hagg. 382.)

If a will be in a foreign language, the probate is granted of a translation of the same by a notary public: (Toller, 72.)

II. *Where the will is to be proved.*

Under the old system, the person before whom the will was to be proved was the ordinary of the place where the testator dwelt, who was usually the bishop of the diocese; or if the testator dwelt within the limits of a peculiar, then the special ordinary to whom that peculiar belonged. If all the testator's goods and chattels lay within such jurisdiction, then the probate obtained from the ordinary thereof was the only proper one. But if the deceased had *bona notabilia*, or goods to the value of 5*l.*, within some other diocese or peculiar, then the will had to be proved in the court of the metropolitan of the province.

Under the new act, if the testator had at the time of his death a fixed place of abode within any of the forty districts mentioned in the Schedule A, then probate of his will in common form may be obtained at the registry of that district: (sect. 46.) But it is not obligatory upon an executor to apply for probate at a District Registry. He may, if he thinks fit, apply at once to the Principal Registry wherein the testator may at the time of his death have had his fixed place of abode: (sect. 59.) This clause may be of use whenever there is any doubt about the testator's domicile, or fixed place of abode at the time of his death.

With regard to all persons not dwelling within any of forty districts at the time of their decease (which will include persons domiciled abroad), their wills must be proved in the Principal Registry.

The first rule laid down for the guidance of the district

registrars embodies this enactment: "Application for probate or letters of administration may be made at the Principal Registry in all cases. Application may be also made at a District Registry in cases where the deceased at the time of his death had a fixed place of abode within the district in which the application is made, and not otherwise."

By sect. 46 of the act, the fact of the deceased having had a permanent abode at the time of his death within the district must appear by affidavit of the person, or some or one of the persons, applying for probate; and sect. 47 enacts, that such affidavit shall be conclusive, for the purpose of authorizing the grant by the district registrar of probate or administration; and no grant made upon the strength of such affidavit shall be liable to be revoked or impeached, if the fact afterwards turns out to have been otherwise.

Rules 3 and 4 for the district registrars are as follows:—

3. The district registrar, before he entertains any application for probate or administration, will take care to ascertain that the deceased had at the time of his death a fixed place of abode within his district.

4. In no case should the district registrar allow the probate or letters of administration to issue until all inquiries which he may see fit to institute have been answered to his satisfaction, and this refers more particularly to application made by a party in person. The district registrar is, notwithstanding, to afford as great facility for the obtaining grants of probate or administration as is consistent with a due regard to the prevention of error or fraud.

Rule 5 directs that, no district registrar shall take out probate or letters of administration for himself in his own district.

III. *By whom the will must be proved.*

Primâ facie, the person entitled to prove the will is the executor (or executors) named in it. If the executor (or executors) renounce, then administration with the will annexed may be granted to some other person. It is enacted by sect. 79 of the act, that when any person renounces probate of the will of which he is appointed executor, or one of the executors, the rights of such person in respect of the executorship shall wholly cease, and the representation to the testator, and administration of his effects may, without further renunciation, devolve and be committed, as if such person had not been appointed executor.

With regard to the manner of renunciation, it has been

laid down that it cannot be verbally, but must be entered and recorded in court: (*Long v. Symes*, 3 Hagg. 774.)

The following is the form of renunciation of probate which has been published by authority:—

In Her Majesty's Court of Probate. The Principal Registry.

Whereas, A.B., late of _____ in the county of _____ deceased, died on the _____ day of _____ 18____, at _____, and whereas he made and duly executed his last will and testament bearing date the _____ day of _____, 18____ (¹), and thereof appointed C. D. executor and residuary legatee in trust [or as the case may be]:

Now I, the said C. D., do hereby declare, that I have not intermeddled in the personal estate and effects of the said deceased, and will not hereafter intermeddle therein with intent to defraud creditors, and I do hereby expressly renounce all my right and title to the probate and execution of the said will [and codicils, if any], and to the letters of administration with the said will [and codicils, if any], annexed, of the personal estate and effects of the said deceased [add, in cases where a proctor, solicitor, or attorney appears for the person renouncing, and I hereby appoint E. F. of _____ my proctor, solicitor, or attorney, to file or cause to be filed this renunciation for me in the said Principal Registry of Her Majesty's Court of Probate.]

In witness whereof I have hereto set my hand and seal, this _____ day of _____, 18____. C. D.

Signed, sealed, and delivered by the said C. D. in the presence of G. H.

[One disinterested witness sufficient.]

(¹) If there are codicils their dates should be also inserted.

See Appendix, for the form adapted to a District Registry.

If a sole executor renounces or dies before proving the will, administration of the goods of the deceased, with the will annexed, must be granted to some other person, who may be the residuary legatee named in the will, or the executor of the first executor, if the latter were the residuary legatee, or the testator's next-of-kin, as the case may be: (see *infra*, *Administration cum testamento annexo*.)

Where there are two or more executors, probate will be granted to any one of them who propounds the will, a reservation being made for the others to come in and prove likewise, if they will: (4 Burn's E. L. 310.) But probate granted to one enures for the benefit of all, and is sufficient to enable the others to act upon the will, though they never prove it themselves: (*Webster v. Spencer*, 3 Barn. & Ald. 363.) And

a case is mentioned where a testator appointed one person executor for ten years, and after that time another person. The first executor proved the will, and at the end of the ten years, the second executor, it is said, might administer without further probate: (*Anon. Freeman*, 313; *Watkins v. Brent*, 1 Myl. & C. 104.) And so, if several executors be appointed with distinct powers, one for one part of the estate, and another for another, one proving suffices: (*Wentw. Off. Ex.* 31.)

In a case decided since the commencement of the act, a testatrix appointed four executors, and in case a certain one of them died, she nominated a person to succeed in his place. The four executors proved the will, and two of them died, including the one for whom a substitute was named. The court granted double probate to the substitute, notwithstanding the subsisting executorship of the two survivors of the original four: (*In the goods of Johnson*, 6 W. R. 275; and see *In the goods of Leighton*, 1 Hagg. 235.)

IV. *When the will is to be proved.*

The stat. 55 Geo. 3, c. 184, s. 37, enacts, "that if any person shall take possession of and in any manner administer any part of the personal estate and effects of any person deceased without obtaining probate of the will or letters of administration of the estate and effects of the deceased within six calendar months after his or her decease, or within two calendar months after the termination of any suit or dispute respecting the will or the right to letters of administration, if there shall be any such, which shall not be ended within four calendar months after the death of the deceased, every person so offending shall forfeit the sum of 100*l.*, and also a further sum at and after the rate of 10*l.* per cent. on the amount of the stamp duty payable on the probate of the will or letters of administration of the estates and effects of the deceased."

The following orders have been issued as to the time of proving wills, applying equally to the Principal and District Registries:—

Prin. Reg. Rules 36 and 39.

36. No probate or letters of administration, with the will annexed, shall issue until after the lapse of seven days from the death of the deceased, unless under the direction of the judge.

39. In every case where probate or administration is, for the first time, applied for after the lapse of three years from the death of the deceased, the reason of the delay is to be certified to the registrars. Should the certificate be unsatisfactory, the registrars are to require an affidavit.

Should the district registrar not be satisfied with the certificate, he may require an affidavit, or communicate with the principal registrar: (Rule 49, Dist. Reg.)

In cases where a testator has disappeared, but no direct proof of his death can be given, the court will act upon the legal presumption of his death. A man may be presumed dead at the expiration of seven years, since he was last seen or heard of: (*Doe v. Jesson*, 6 East, 85.) And the court will act upon the presumption of a person's death, within a much shorter time, where evidence can be adduced making the fact of his death at or about a certain time a moral certainty: (*In the goods of Norris*, 6 Week. Rep. 261.)

When a person has been long absent in foreign parts, common fame will be admitted to prove his death: (Swinb. part 6, s. 13, pl. 2.)

V. *How the will is to be proved.*

A will may be proved either in common form or by form of law, which is also called proving in solemn form or *per testes*.

When a will is proved in common form, it is presented by the executor to the registrar, and witnesses are produced to prove that it is in fact what it purports to be, the last will of the deceased person, and that in the absence of parties interested, and without the citation of any of them.

A will is proved in solemn form when parties interested, such as the widow or next of kin of the deceased are cited, and oppose the grant, or merely stand by and see the proceedings. And the executor may either be compelled by parties interested to prove the will in this open and solemn manner; or he may do so of his own accord as a measure of prudence. The advantage is, that a will thus proved cannot be set aside when the witnesses are dead, whereas if a will has been proved only in common form, the executor may, at any time within thirty years (see *Williams Ex.* pt. 1, bk. 4, ch. 3, s. 4, note), be called upon by a person having interest to prove it *per testes* in solemn form.

1. *Proof in common form.*

Granting probate in common form belongs to the non-contentious business of the court, and this it will be our object here first to discuss.

The executor produces the will and codicils (if any) to the principal registrar, or district registrar, as the case may be, or to some person qualified to administer the necessary oaths. If the testator had at the time of his death a fixed

place of abode in a district, application may be made either at the Principal Registry or at the District Registry, at the option of the executor. Applications to the Principal Registry must (for the present) be made through a proctor, solicitor, or attorney: (Prin. Reg., Rule 2.) Applications to a District Registry may, if preferred, be made in person: (Dist. Reg., Rule 2.)

The executor's oath, if application be made at the Principal Registry, is as follows:

In Her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B. deceased.

I C. D. of _____ in the county of _____ make oath and say [or solemnly affirm], that I believe this paper writing [or these paper writings] hereunto annexed to contain the true and original last will and testament [or last will and testament with _____ codicils] of A. B., late of _____, in the county of _____, deceased, and that I am the sole executor [or one of the executors] therein named [or executor according to the tenor thereof, executor during life, executrix during widowhood, or as the case may be], and that I will faithfully administer the personal estate and effects of the said testator by paying his just debts and the legacies contained in his will [or will and _____ codicils], so far as the same shall thereto extend and the law bind me; that I will exhibit an inventory, and render an account of my executorship, whenever required by law so to do; that the testator died at _____, in the county of _____, on the _____ day of _____, 18____, and that the whole of the personal estate and effects of the said testator does not amount in value to the sum of _____ pounds, to the best of my [or our] knowledge, information, and belief. (Signed) C. D.

Sworn at _____, this _____ day of _____, 18____, before me, E. F.

Each testamentary paper to be marked by the persons sworn and the person administering the oath.

See Appendix for the form of oath when made at a District Registry.

The executor must also make an affidavit to be forwarded to the Commissioners of Inland Revenue, as to the amount of personal property of which the deceased died possessed, of which the following is a form:—

In Her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B., deceased.

The _____ day of _____, 18____
I C. D., of ('), _____ make oath [or solemnly affirm] that I am one

(') Insert the names, residences, and titles, or profession of the persons making the affidavit.

of the executors [or the executor] named in the last will and testament ^(*) of the said A. B., late of , deceased; that the said deceased died on or about the day of , in the year of our Lord one thousand hundred and , at ^(*) , and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which a probate of the said will is to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially [if any leaseholds insert clause No. 1, hereon indorsed], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information and belief [if no leaseholds insert clause No. 2 hereon endorsed].

(Signed) C. D.

Sworn at , on the day of , before me [person authorized to administer oaths under the act].

N.B. Forms for the two leasehold clauses to be printed on the back of the affidavit.

^(*) Insert codicils, if any.

^(*) Insert place of death, or set forth the reason why the same cannot be furnished.

Form of Leasehold Clause No. 1.

Including the leasehold estate or estates for years of the said deceased, whether absolute or determinable on a life or lives.

Form of Leasehold Clause No. 2.

And I [or we] lastly make oath, that the said deceased was not possessed of or entitled to any leasehold estate or estates for years, whether absolute or determinable on a life or lives, to the best of my [or our] knowledge, information, and belief.

See Appendix for the form at a District Registry.

On application for grant of probate being made to a district registrar, it is his duty to transmit notice thereof to the registrar of the Principal Registry, by the next post after the application has been made: (sect. 49.)

It is then the duty of the principal registrars to forward as soon as may be to the district registrar a certificate under the hand of one of them, that no other application (provided such be the case) appears to have been made in respect of the goods of the same deceased person; and the district registrar cannot grant probate until he shall have received such certificate: (sect. 49.)

All such notices are to be filed and kept in the Principal Registry, and are to be examined by the registrars of the Principal Registry with reference to every such notice which they receive; and they are to communicate with

the district registrars thereon as occasion shall require : (sect. 51.)

Previous to the stat. 1 Vict. c. 26, a will of personal property might be good, although unattested by any witness, and very informal papers or memoranda were occasionally proved as wills. Wills made previous to the first day of January, 1838, are not within the operation of the statute; and such wills may still occasionally be produced for probate.

The Rules and Orders contain a code of instruction for the conduct of the principal and district registrars adapted to wills of both kinds.

The following are the instructions for the principal registrars.

As to Probate of Wills and Codicils and Letters of Administration, with the Will [or Will and Codicils] annexed, where the Wills and Codicils or the Codicils only are dated after the 31st December, 1837.

4. If there be no attestation clause to a will presented for probate, or if the attestation clause thereto be insufficient, the registrars must require an affidavit from at least one of the subscribing witnesses, if either of them are living, to prove that the provisions of 1 Vict. c. 26, s. 9, and 15 & 16 Vict. c. 24,⁽¹⁾ in reference to the execution of the will were in fact complied with; and such affidavit must be engrossed and form part of the probate, so that the same may be a perfect document on the face of it.

5. If on perusing the affidavit it appear that the requirements of the statute were not complied with, the registrars must refuse probate.

6. If on perusing the affidavit or affidavits setting forth the facts of the case, it appear doubtful whether the will has been duly executed, the registrars may require the parties to bring the matter before the judge on motion.

7. If both the subscribing witnesses are dead, or if from other circumstances, no affidavit can be obtained from either of them, resort must be had to other persons, if any, who may have been present at the execution of the will; but if no affidavit of any such other person can be obtained, in order to probate, evidence on affidavit must be procured of that fact and of the handwriting of the subscribing witnesses, and also of any circumstances which may raise a presumption in favour of the due execution of the will.

8. Interlineations and alterations are invalid unless they existed in the will at the time of its execution, or if made afterwards unless they

(1) The Wills Act Amendment Act, 1852, passed for the purpose of defining "the foot or end of a will." The clause in which this definition is attempted is given in the Appendix.

have been executed and attested in the mode required by the statute, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of some codicil thereto.

9. Where interlineations or alterations appear in the will (unless duly executed or duly accounted for by the attestation clause), an affidavit or affidavits in proof of their having existed in the will before its execution, must be filed, except when the alterations are merely verbal or are of but small importance, and are evidenced by the initials of the attesting witnesses.

10. In like manner, erasures and obliterations are not to prevail unless proved to have existed in the will at the time of its execution, or unless the alterations thereby effected in the will are duly executed and attested, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of some codicil thereto. If no satisfactory evidence is adduced as to the time when such erasures and obliterations were made, and the words erased or obliterated be not entirely effaced, but can upon inspection of the paper be readily ascertained, they must form part of the probate.

11. In every case of words having been erased which might have been of importance, an affidavit should be required.

12. If a will contained a reference to any deed, paper, memorandum, or other document, of such a nature as to raise a question whether it ought or ought not to form a constituent part of such will, the production of such deed, paper, memorandum, or other document should be required, with a view to ascertain whether it be entitled to probate; and if not produced its nonproduction should be accounted for.

13. No deed, paper, memorandum, or other document can form part of a will or codicil unless it were in existence at the time when the will or codicil was executed.

14. If any vestiges of sealing wax or wafers or other appearances are observable, leading to the inference that any paper, memorandum, or other document may have been annexed or attached to the will, they should be satisfactorily accounted for, or the production of such paper, memorandum, or other document must be required; and if not produced its nonproduction must be accounted for.

15. The above rules and orders respecting wills apply equally to codicils.

As to Probate of Wills, Codicils, and Testamentary Papers relating to Personalty, and dated before the 1st Jan. 1838.

17. It is not necessary that a will, codicil, or testamentary paper dated before 1st January 1838 should be attested by witnesses to constitute it a valid disposition of a testator's personal property. Although neither signed by the testator nor attested by witnesses, it may nevertheless be valid; but in such cases the testator's intention that it should operate as his will, codicil, or testamentary disposition must be proved clearly by circumstances.

18. A will, codicil, or testamentary paper, signed by the testator

at the end of it, and attested by two disinterested witnesses (although there be no clause of attestation) is *prima facie* entitled to probate.

19. In cases where a will, codicil, or testamentary paper is attested by two witnesses, such witnesses are not required to have been present with the testator at the same time. It is sufficient if the testator subscribed his name or made his mark to it in the presence of, or produced it with his name already written or his mark already made, to one attesting witness, and afterwards to the other attesting witness, provided that on each occasion he declared it to be his will or codicil, or otherwise notified his intention that it should operate as such.

20. If the will, codicil, or testamentary paper is signed at the end of it by the testator, but is unattested, and there is nothing to show an intention that it should be attested by witnesses, the affidavit of two disinterested persons to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

21. If the will, codicil, or testamentary paper is signed at the end of it by the testator, and attested by one witness only, and there is nothing to show the testator's intention that it should be attested by a second witness, the affidavit of one disinterested person to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

22. The circumstance of a person being named as an executor in the will, codicil or testamentary paper, or being interested as a legatee, or as a husband or wife of a legatee under such will, codicil, or testamentary paper, rendered him incompetent to become an attesting witness to it, so that if the name of a person so interested appears as that of a subscribing witness to the will or testamentary paper, the same, so far as regards his attestation, must be considered as unattested, and his evidence in support thereof will be inadmissible, unless he shall first release his interest thereunder.⁽¹⁾

23. If an attestation clause, or the word "witnesses," appear written at the foot of the paper, the same being unattested, or if the paper purport on the face of it to be a draft of a will, the copy of a will, or instructions for a will, it must *prima facie* be considered as an incomplete paper, and not, save under special circumstances, entitled to probate.

24. Any appearance of an attempted cancellation of a paper by burning, tearing, obliteration, or otherwise must be accounted for.

25. Every fact leading to a presumption of abandonment or revocation of a paper on the part of the testator must be accounted for.

26. Alterations and interlineations made by the testator, if unattested, are to be proved by an affidavit of two persons to his handwriting. If the same are in the handwriting of any person other than the testator, it will suffice to prove by affidavit that they were known to and approved of by the testator. Proof by affidavit that they existed in the paper

⁽¹⁾ But query the effect of the application of the common law rules of evidence to a will thus attested? (see *infra*, evidence.)

at the time it was found in the repositories of the testator recently after his death may, under circumstances, suffice. Alterations and interlineations made since the 31st December 1837, are subject to the provisions of 1 Vict. c. 26.

27. With respect to deeds, papers, memoranda, or other documents mentioned in a testamentary paper, or appearing to have been annexed or attached thereto, the foregoing rules, orders, and instructions as to wills bearing date since the 31st December 1837 will apply.

28. A will made before the 1st of January 1838 is confirmed by a codicil duly executed bearing date on or after that day.

The instructions issued to the district registrars differ little from those which precede. In cases of doubt, the district registrars are required to transmit a statement to the principal registrars, whose duty it will be to obtain the direction of the judge thereon. By District Order, No. 22, no grant of probate or administration with the will annexed, the will being *simply* an execution of a special power, should be made without communication with the registrars of the Principal Registry. The reader is referred to the Appendix for the rules *in extenso*.

Affidavit of execution.—When an affidavit is required from one of the attesting witnesses to a will dated after 31st December, 1837, that the attestation took place in the mode prescribed by the statute, it will be in the following form:—

In Her Majesty's Court of Probate. The Principal (or District) Registry.

In the goods of A. B., deceased.

I C. D., of in the county of make oath [or solemnly affirm], that I am one of the subscribing witnesses to the last will and testament [or codicil, as the case may be] of the said C. D., late of in the county of deceased, the said will [or codicil] being now hereunto annexed, bearing date , and that the said testator executed the said will [or codicil] on the day of the date thereof, by signing his name at the foot or end thereof [or in the testimonium clause thereof, or in the attestation clause thereto, as the case may be], as the same now appears thereon, in the presence of me and of the other subscribed witness thereto, both of us being present at the same time, and we thereupon attested and subscribed the said will [or codicil] in the presence of the said testator.

(Signed) C. E.
Sworn at on the day of 18 , before me [person authorized to administer oaths under the act].

N.B.—If the signature is in testimonium clause or attestation clause, it must be shown in the affidavit that the testator fully intended the same as his final signature to his will.

Affidavit of handwriting.—The following form of affidavit may be used in the case of a will made previous to January, 1838, when it is necessary to give evidence of the testator's handwriting:—

In Her Majesty's Court of Probate. The Principal Registry.

I A. B. of in the county of make oath [or solemnly affirm], that I know and was well acquainted with C. D., late of in the county of deceased, who died on the day of at for many years before and down to the time of his death, and that during such period I have frequently seen him write and also subscribe his name to writings, whereby I have become well acquainted with his manner and character of handwriting and subscription, and having now with care and attention perused and inspected the paper writing hereunto annexed, purporting to be and contain the last will and testament of the said deceased, beginning thus ending thus and being subscribed thus⁽¹⁾ "C. D." I further make oath, that I verily and in my conscience believe the whole body, series, and contents of the said will, together with the names "C. D." subscribed thereto as aforesaid, to be of the true and proper handwriting and subscription of the said "C. D." deceased.

On the day of 18 the said A. B. was duly sworn at to the truth of this affidavit [or made this solemn affirmation].

Before me, E. F.

[Person authorized to administer oaths under the act].

⁽¹⁾ Include in these recitals the date of the will.

See Appendix for District Registry form.

Form of probate.—If the registrar be satisfied with the evidence produced, probate of the will may be granted in form as follows:—

In Her Majesty's Court of Probate. The Principal Registry.

Be it known, that on the day of 18 , the last will and testament [or the last will and testament with codicils] hereunto annexed of A. B. late of deceased, who died on or about at , was proved, and registered in the Principal Registry of Her Majesty's Court of Probate, and that the administration of all and singular the personal estate and effects of the said deceased was granted by the aforesaid court to C. D., the sole executor [or as the case may be] named in the said will, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased and the legacies contained in his will [or will and codicils] so far as he is thereunto bound by law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to

render a just and true account thereof whenever required by law so to do. (Signed) E. F., Registrar.

Extracted by (L.S.)
Sworn under £ , and that the testator } To be written in the
died on or about the day of 18 . } margin of probate.

A similar form is used if the probate be issued from a District Registry: (see Appendix.)

Double probate.—When one of two executors alone proves the will, the second, however, not renouncing probate, power is reserved for the latter at any time if he pleases to come in and prove. The following is the form of a double or second probate given under such circumstances:—

In Her Majesty's Court of Probate. The Principal Registry.

Be it known, that on the day of 18 , the last will and testament [or the last will and testament with codicils] of A. B., late of , deceased, who died on or about , at , was proved and registered, and that administration of all and singular the personal estate and effects of the said deceased, and any way concerning his will, was granted to C. D., one of the executors named in the said will [or codicil], he having been already sworn well and faithfully to administer the same, and to make a true and perfect inventory of all the said personal estate and effects, and to render a just and true account thereof whenever required by law so to do, power being reserved of making the like grant to E. F., the other executor named in the said will, when he should apply for the same. And be it further known, that on the day of 18 , the said will of the said deceased was also proved, and that the like administration of all and singular the personal estate and effects of the said deceased, and any way concerning his will, was granted to the said E. F., he having been first duly sworn well and faithfully to administer the same, and to make a true and perfect inventory of the personal estate and effects of the said deceased, and to render a just account thereof whenever required by law so to do.

(Signed)

G. H., Registrar.

Extracted by (L.S.)
Sworn under £ , and that the testator died on or about
the day of 18 .

Former grant, January 18 , under the same sum.

Limited probate of married woman's will.—The 16th Order for the guidance of the Principal Registrars, directs as follows:—

16. In case of probate of a married woman's will or of administration with the will of a married woman annexed made by virtue of a power, the power under which the will purports to have been made must be specified in the grant.

The following is a form suitable for probate of a married woman's will made under a power. The grant is made to one of two executors, power being reserved to the other to apply for probate:—

In Her Majesty's Court of Probate. The Principal Registry.

Be it known that A. B., wife of C. B., late of in the county of died on the day of 18, at , and having during her coverture with the said C. B., by virtue of certain powers and authorities vested in her by a certain indenture of settlement, bearing date the day of 18, and made between E. F. of in the county of esquire, of the first part, the said deceased, by her then name and description of A. G. of in the county of spinster, of the second part, and H. I. of in the same county, gentleman, and the said C. B. of aforesaid, of the third part, made and executed her last will and testament, bearing date the day of one thousand eight hundred and and thereof appointed L. M. and O. P. executors.

And be it also known, that on the day of 18, the said last will and testament of the said A. B., hereunto annexed, was proved and registered in the said principal registry, and that probate of the said will of the said deceased, limited to the administration of all such personal estate and effects as she the said deceased by virtue of the aforesaid indenture had a right to appoint or dispose of, and has in and by her said will appointed or disposed of accordingly, but no further or otherwise, was granted to the said L. M., one of the executors named in the said will as aforesaid, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased, and the legacies contained in her said will, as far as he is thereunto bound by law, and to exhibit a true and perfect inventory of the said limited estate and effects, and to render a just and true account thereof whenever required by law so to do. Power being reserved of making a like grant of probate to the said O. P., the other executor, when he shall apply for the same.

(Signed) J. S. Registrar.
(L.S.)

Extracted by

Sworn under £ , and that the testatrix died on the day of 18 .

Custody of the original will.—Probate being obtained, the original will is delivered to the care of the registrar. Each district registrar files and preserves the original wills, of which probate or administration with the will annexed have been granted, in the Public Registry of the district: (sect. 52.)

He is also required to transmit, on the first Thursday in every month, to the registrars of the Principal Registry, a

list of grants of probate and administration made up to the last preceding Saturday (not having been previously returned), and also a certified copy of every will: (sect. 51.)

Effect of a caveat.—Caveats against the grant of probates may be lodged in the Principal Registry or any District Registry; and on a caveat being lodged in a District Registry, the district registrar immediately sends a copy thereof to be entered among the caveats in the Principal Registry; and when a caveat is entered in the Principal Registry, in case the deceased is alleged to have resided at the time of his death in a country district, notice is immediately to be given to the district registrar of such district: (sect. 53.) The effect of the caveat is to prevent the registrar proceeding to grant the probate in common form, and the foundation is laid by it for contentious proceedings.

Subpœna to bring in script.—A subpœna to compel any person supposed to have in his possession any paper or *script* purporting to be testamentary, may be obtained under the provisions of sect. 26 of the act. It will be granted in cases *where no suit is pending*, upon motion supported by affidavit: (sect. 26 of act and Contentious Business Orders, No. 31.) The granting of such subpœnas belongs to the common form or non-contentious business of the court: (see title of Form, No. 23, Prin. Reg. in the Appendix.)⁽¹⁾ The following is the form of the subpœna in such a case:—

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To of

Whereas it appears by a certain affidavit filed in the Principal Registry of our Court of Probate [or filed in the District Registry of attached to our Court of Probate], bearing date the day of , 18 , and made by of , that a certain original paper or script being or purporting to be testamentary, to wit [here describe the paper], bearing date the day of , 18 , is now in your possession or under your control;

Now, this is to command you, that within eight days after

⁽¹⁾ If it be correctly supposed that the granting of a subpœna to bring in a script, where no suit is pending, belongs to the *non-contentious* business of the court, it follows that such a subpœna cannot be obtained in a County Court, to which jurisdiction is given only in *contentious* matters: (sect. 54.)

service hereof on you, inclusive of the day of such service, you do bring into and leave in the Principal Registry of our said court [or the District Registry of , attached to our said court] the said original paper now in the possession of you the said , or in case the said original paper be not in your possession or under your control, that you, within eight days after the service hereof on you, inclusive of the day of such service, do file in the Principal Registry of our said court [or in the District Registry of , attached to our said court], an affidavit to that effect, and therein set forth what knowledge you have of and respecting the said script : and this you shall in no wise omit under the penalty of one hundred pounds. Witness [insert the name of the judge], at the Court of Probate, the day of , 18 , in the year of our reign.

Indorsement to be made of the service.

This subpoena was served by G. H., on , of , on the day of , 18 .

(Signed) G. H.

Affidavit of plight and condition and finding.—The following forms of affidavits will be used when it is necessary to obtain evidence of the plight and condition of a will when found, and of the means which have been used to find one.

In Her Majesty's Court of Probate. The Principal Registry.

I A. B., of , in the county of , make oath [or solemnly affirm], that I am the sole executor named in the paper writing now hereunto annexed, purporting to be and contain the last will and testament of E. F., late of , in the county of , deceased (who died on the day of , at), the said will bearing date the day of , beginning thus, ending thus, and being subscribed thus, "C.D.," and having viewed and perused the said will and particularly observed that [here recite the finding of the will, and the various obliterations, interlineations, erasures, and alterations (if any), and the general plight and condition of the will, or any other matters requiring to be accounted for, and clearly trace the will from the possession of the deceased in his lifetime up to the time of making this affidavit] ; I, the deponent, lastly make oath that the same is now in all respects in the same state, plight, and condition as when found [or as the case may be].

On the day of , 18 , the said A. B. and C. D. were duly sworn at to the truth of this affidavit [or made this solemn affirmation before me].

I. J.

[Person authorized to administer oaths under this act]

In Her Majesty's Court of Probate. The Principal Registry.

I A. B., of , in the county of , make oath [or solemnly

affirm] that I am the sole executor named in the paper writing hereto annexed, purporting to be and contain the last will and testament of C. D., late of _____, deceased, who died on the _____ day of _____, in the year 18____, at _____, the said will beginning thus, "_____," ending thus, "In witness whereof, I have hereto set my hand this _____ day of _____, in the year of our Lord one thousand eight hundred and fifty-four" [or as the case may be], and being thus subscribed, "C. D." And referring particularly to the fact that the blank spaces originally left in the said will for the insertion of the day and month of the date thereof have never been supplied [or that the said will is without date, or as the case may be], I further make oath [or solemnly affirm] that I have made inquiry of E. F., the solicitor of the said deceased, and that I have also made diligent and careful search in all places where he the said deceased usually kept his papers of moment and concern, and in his depositories, in order to ascertain whether he had or had not left any other will, but that I have been unable to discover any such will. And I lastly make oath [or solemnly affirm], that I verily believe the said deceased died without having left any will, codicil, or testamentary paper whatever other than the said will by me hereinbefore deposed of.

A. B.

On the _____ day of _____, 18____, the said A. B. was duly sworn at _____ to the truth of this affidavit [or made this solemn affirmation] before me.

G. H.

[Person authorized to administer oaths under the act.]

This form of affidavit to be used when it is shown by affidavit that neither the subscribed witnesses nor any other person can depose to the precise time of the execution of the will.

The following miscellaneous rules regarding the issue of probate in common form may properly be added here:—

Will to be marked by executor.

42. Every will or copy of a will to which an executor or administrator with the will is sworn should be marked by such executor or administrator and by the person before whom he is sworn.

Wills of blind or illiterate persons.

59. The registrars are not to allow probate of the will, or administration with the will annexed, of any blind person, or of any obviously illiterate or ignorant person, to issue, unless they have previously satisfied themselves that the said will was read over to the deceased before its execution, or that the deceased had at such time knowledge of its contents.

Reswearing and alteration.

60. Whenever, subsequently to a grant having been made, the value

of the personal estate and effects of the deceased person is resworn under a different amount, or any renunciation is filed, or any alteration is made in the grant, notice of such reswearing, renunciation, or alteration, is without delay to be forwarded by the registrars of the Principal Registry to all the district registrars.

Irish probates.

61. The seal is not to be affixed to any probate or letters of administration granted in Ireland, so as to give operation thereto as if the grant had been made by the Court of Probate in England, unless such probate or administration be duly stamped in respect of the personal estate and effects of which the deceased died possessed in England, and unless the same appear from a stamp on the probate or letters of administration expressly denoting the same, or unless the same appear from a certificate of the Commissioners of Inland Revenue or their proper officer.

Engrossment of probate.

63. The registrars are to take care that the copies of wills to be annexed to the probate or letters of administration are fairly and properly written in the engrossing hand heretofore in use in the Prerogative Court, and are to reject those which are otherwise.

2. Proof of wills in solemn form.

A will is proved in solemn form when parties having an interest, namely, those to whom in the absence of a will administration of the goods of the deceased would be committed, are cited to witness the proof of the will before the judge, whereupon its validity is solemnly tried.

The executor may either propound the will voluntarily for proof in solemn form, or he may be called upon so to do by some person having interest.

This proceeding may, in the latter case, be commenced by a caveat, which may be lodged by the person wishing to oppose the probate of a will, in the Principal or District Registry, as the case may be. But in any case it would appear that a caveat lodged in the Principal Registry will suffice: (sect. 53.) It is the duty of the district registrar, with whom a caveat is lodged, to send immediate notice thereof to the Principal Registry, and *vice versa*.

The form of a caveat is as follows:—

In Her Majesty's Court of Probate. The Principal Registry.

Let nothing be done in the goods of A. B., late of
deceased, who died on the *day of* *18* *at* *un-*

known to C. D. of _____ having interest [or to E. F., proctor, solicitor, or attorney of parties having interest].

Dated this _____ day of _____ 18 _____
(Signed) C. D. of _____ [or E. F. of _____ the
proctor, solicitor or attorney of parties having interest].

It is the business of the registrar with whom the caveat is lodged to warn the party entering it to appear at a certain day and set forth his interest. The warning is in the following form :—

In Her Majesty's Court of Probate. The Principal Registry.

To A. B. of _____ [or to C. D. of _____ proctor, solicitor, or attorney of parties having interest].

You are hereby warned, within six days after the service of this warning upon you, inclusive of the day of such service, to cause an appearance to be entered for you in the Principal Registry of the Court of Probate to the caveat entered by you in the goods of E. F., late of _____ deceased, who died at _____ on the _____ day of _____ 18 _____, and to set forth your [or your client's] interest; and take notice that in default of your so doing the said court will proceed to do all such acts, matters, and things as shall be needful and necessary to be done in and about the premises.

(Signed) X. Y., One of the registrars of her Majesty's Court of Probate.

Indorsement to be made after service.

This warning was served by I. K. on A. B. [or C. D.] of _____, the person named in the caveat entered in respect of the goods of the said deceased at _____ on the _____ day of _____ 18 _____.

(Signed) I. K.
[or The duplicate of this warning, signed by the said X. Y., was sent by the public post directed to the said A. B. [or C. D.] at _____ on the _____ day of _____ 18 _____.

(Signed) I. K.

The following rules and orders relative to caveats have been issued.

52. A caveat shall remain in force for the space of six months only, and then expire and be of no effect; but caveats may be renewed from time to time as heretofore.

53. The registrars shall, immediately upon a caveat being lodged, send notice thereof to the registrars of any district in which it is alleged the deceased resided at the time of his death, or in which he is known to have had a fixed place of abode at the time of his death.

54. No caveat shall affect any grant made on the day on which the caveat is entered, unless notice of such caveat has been received prior to the grant passing the seal.

55. A caveat shall be warned at the place mentioned in it as the address of the person who entered it.

56. It shall be sufficient for the warning of a caveat that a registrar send by the public post a warning signed by himself, and directed to the person who entered it, at the address mentioned in it.

57. Any person intending to oppose a grant of probate or letters of administration must appear, either personally, or by his proctor, solicitor, or attorney, and enter an appearance in the principal registry. This rule is to apply whether the person intending to oppose the grant has or has not been previously warned to a caveat or served with a citation.

The warning of caveats is included amongst the non-contentious business. But

6. Upon a party appearing in answer to the warning of a caveat, the matter shall be entered as a cause in the court-book, and the contentious business shall thereupon be held to commence.

7. Where a party proposes to prove a will or codicil in solemn form of law, and no caveat has been entered, or a caveat has been entered, and no appearance given to the warning thereof, the contentious business shall be held to commence with the extracting of a citation in the forms Nos. 3, 5, or in some similar form.

The form No. 3 is as follows:—

In Her Majesty's Court of Probate.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To , of in the county of .

Whereas A. B. of , claiming to be the executor of C. D., late of , deceased, who died on or about the day of 18 , at intends to prove in solemn form of law as well the alleged last will and testament of the said deceased bearing date the day of , as also the [first] codicil thereto, bearing date the day of , [and so on for any other codicils]: now this is to command you, that within eight days after service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court of Probate in support of any interest you may have in the estate and effects of the said deceased: and take notice that in default of your so doing the judge of our said court will proceed to hear the said will [and codicils] proved in solemn form of law and to pronounce sentence in regard to the validity of the same, your absence notwithstanding.

(Signed) E. F., Registrar.

Indorsement to be made after service.

This citation was served by G. H. on the within named of , at , on the day of , 18 .

(Signed) G. H.

[P.]

E

The 8th order for the conduct of contentious business is as follows :—

8. Citations to see proceedings may be extracted from the registry, on the application of any party to the cause. A form is given, No. 4. Before a party can proceed after the service of a citation, an appearance must have been previously entered by or on behalf of the party cited, or an affidavit of personal service must have been filed in the registry, or the order of the judge founded on an affidavit, and giving leave to proceed, must have been obtained, and filed in the registry.

The following is the form of citation to see proceedings.

In Her Majesty's Court of Probate.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To of in the county of .

Whereas there is now depending in our Court of Probate a case entitled A. B. v. C. D., wherein the said A. B. is proceeding to prove in solemn form of law the alleged last will and testament with codicils, of E. F., late of deceased, who died on or about the day of at .

And whereas it has been alleged that you are one of the next of kin [or interested under a former will of the deceased, or that you are a party entitled in distribution to the personal estate and effects of the deceased, or as the case may be]. This is to give you notice to appear in the said cause, either personally or by your proctor, solicitor, or attorney, should you think it for your interest so to do, at any time during the dependence of the said cause, and before final judgment shall be given therein: And take notice, that in default of your so doing the judge of our Court of Probate will proceed to hear the said will [and codicils] proved in solemn form of law, and pronounce judgment in the said cause, your absence notwithstanding.

(Signed) E. F., Registrar.

Indorsement to be made after service.

This citation was served by G. H. on of at on the day of 18 .

(Signed) G. H.

9. Every citation shall be written or printed on parchment, and the party taking out the same, or his proctor, solicitor, or attorney, shall take it, together with a præcipe, a form of which is given, marked No. 6, to the registry, and there deposit the præcipe and get the citation signed and sealed. The address given in the præcipe must be within three miles of the General Post-office. Personal service of any citation shall be effected by leaving a copy of the citation with the party cited, and showing him the original, if required by him so to do.

The following is the form of Præcipe :—

In Her Majesty's Court of Probate.

*Citation [or citation to see proceedings] for A. B. of against
C. D., in a matter of proving in solemn form of law the last will and
testament with codicils of E. F., late of , in the county of,
&c., deceased [or generally describing the nature of the suit.]*

*P. A., proctor, solicitor or attorney
for [or A. B. in person.]*

The day of , 18 .

The following is the form of an entry of appearance.

In Her Majesty's Court of Probate.

*A. B. plaintiff, against C. D., The defendant, C. D., appears in
or person, or E. F., proctor, solicitor,
against C. D. and another, or attorney for C. D. appears
or for the defendant.
against C. D. and others.*

[Here insert the address required by rule No. 9.]

Entered the day of , 18 .

Concerning entry of appearance the following Rules are given :—

10. The entry of the appearance of a party shall be accompanied by an address within three miles of the General Post-office.

11. It shall be sufficient to leave all pleading and other proceedings not expressly requiring personal service under these rules and orders at the address furnished so as aforesaid by plaintiff and defendant respectively.

12. In case the party cited does not appear within the time limited in the citation, the plaintiff shall allege the default of appearance on the record, and the cause shall thereupon proceed in default.

Pleadings.—The commencement of contentious proceedings having been thus made we now come to the pleadings, for which the following rules are given :—

14. In case of proving a will in solemn form of law, the plaintiff shall declare in the forms Nos. 8 and 9, or as near thereto as the circumstances of the case admit ; and such declaration shall be delivered to the defendant, and a copy thereof filed in the registry upon one and the same day.

15. The declaration may be delivered to the defendant at any time after the defendant has entered an appearance. If the plaintiff do not deliver his declaration within one month after an appearance has been given, the defendant may apply to the judge in chambers to fix a time within which such declaration shall be delivered.

16. In case of proceedings in default, the plaintiff shall file his declaration in the registry within eight days from the last day allowed in the citation for the appearance of the defendant.

The form No. 8 is as follows:—

In Her Majesty's Court of Probate.

The day of 18 .

A. B., by C. D., his proctor, solicitor, or attorney, says that E. F., late of deceased, who died on or about the day of at made his last will and testament with codicils, bearing date, to wit, the said will on the day of 18 , the said first codicil on the day of 18 , [and so on for any other codicils,] and in the said will appointed the said A. B. sole executor [or as the case may be]; that the said will and codicils respectively, after having been reduced into writing, were signed by the said testator in the presence of two witnesses present at the same time, and who subscribed the same in the presence of the said testator, and whose names severally appear upon the said will and codicils; and that the said testator was at the time of the execution of the said will and codicils respectively, of perfect sound mind, memory and understanding.

(Notice where the defendant appears.)

The defendant must plead hereto in eight days from the date hereof, otherwise the plaintiff will proceed to obtain probate of the said will [and codicils].

Form No. 9 is entitled "Declaration in an Interest Cause," and is applicable to the case of the next of kin claiming administration and denying the existence of a will.

In Her Majesty's Court of Probate.

The day of 18 .

A. B. [or A. B. by C. D., his proctor, solicitor, or attorney] saith, that E. F., late of deceased, died on or about the day of 18 , at intestate, a widower, without children, parent, brother or sister, uncle or aunt, nephew or niece, leaving the said A. B. his lawful cousin german and one of his next of kin [or as the case may be.]

(Notice.)

The defendant must plead hereto in eight days from the date hereof, otherwise the plaintiff will proceed to obtain letters of administration to the personal estate and effects of the said deceased.

17. The defendant, if desirous of pleading, must deliver the plea to the plaintiff within eight days after the service of the declaration, and file a copy thereof in the registry on one and the same day, otherwise

he will not be permitted to plead, except with the permission of the judge. Forms of pleas are given, Nos. 10 and 11.

No. 10 is the form of a plea, when it is intended to dispute the validity of a will.

In Her Majesty's Court of Probate.

The day of 18 .

G. H. [or G. H. by I. Z., his proctor, solicitor, or attorney,] saith, that the paper writing bearing date the day of 18 , and alleged by the plaintiff to be the last will and testament of A. B., late of in the county of deceased [or the first or any other codicil thereto], was not executed according to the provisions of 1 Vict. c. 26, [or that the deceased at the time the said alleged will [or alleged codicil] bears date, to wit, on the day of 18 , was not of sound mind, memory, and understanding], [or any other averment in accordance with the circumstances of the case].

No. 11, entitled "Plea in an Interest Cause," merely negatives the interest set up by the plaintiff. Both this and the form No. 9 are more adapted for cases where no will is sought to be set up, but the contest is simply between parties claiming interest as next of kin. The form No. 11 is as follows :—

In Her Majesty's Court of Probate.

The day of 18 .

G. H. [or G. H. by I. K., his proctor, solicitor, or attorney,] saith, that A. B., the plaintiff, is not the lawful cousin german of E. F., who died on or about the day of 18 at the deceased in this cause. And further, that the said deceased died intestate, a widower, without child, parent, brother or sister, uncle or aunt, nephew or niece, or cousin german, leaving him the said G. H. his lawful cousin german once removed, and his only next of kin [or as the case may be].

18. If the plaintiff propound a will, and the defendant in his plea allege the existence of a will of later date, the plaintiff, as well as the defendant, may, with and subject to the permission of the judge, adduce proof on the trial of the validity of the will upon which he relies.

19. In testamentary causes, the several scripts of the testator, that is to say wills, codicils, drafts of wills or codicils, or written instructions for the same, shall continue to be brought into the registry as heretofore. And for this purpose, every plaintiff shall at the time of filing the copy of his declaration in the registry file therewith an affidavit of scripts to the effect of form No. 12; and in like manner the defendant, upon filing the copy of his plea, shall file therewith a similar affidavit. The time for the filing of these affidavits of scripts may be varied by order of the judge, on the application of either party. Every script coming within

the terms of the affidavit, and of which the deponent has any knowledge, is to be specified therein, and every script in the custody or under the control of the party making the affidavit is to be annexed thereto, and deposited therewith in the registry.

Form No. 12 is as follows :—

In Her Majesty's Court of Probate.

A. B. v. C. D.

I, [A. B. or C. D.] of _____ in the county of _____ party in this cause, make oath and say, that no paper or parchment writing, being or purporting to be or having the form or effect of a will or codicil or other testamentary disposition of E. F., late of _____ in the county of _____, deceased, the deceased in this cause, has at any time, either before or since his death, come to the hands, possession, or knowledge of me, this deponent, save and except the true and original last will and testament of the said deceased now remaining in the registry of this court, the said will bearing date the _____ day of 18 [or as the case may be] also save and except [here add any other testamentary papers of which the deponent has any knowledge].

(Signed) A. B.

Sworn before me

[Person authorized to administer oaths under the act.]

N.B.—All papers answering the description in the affidavit which are in the possession or under the control of the party making the affidavit should be particularly described therein, and, if possible, brought into the registry annexed thereto.

Further Pleading.

20. Either of the parties may give in such further pleading as he may be advised. If either party desire to amend his pleadings, he may do so by permission of the judge, and in such form and under such terms as the judge may approve. The form of the declaration and plea will, it is presumed, be a sufficient guide to practitioners as to the form of any further pleadings.

21. If the defendant or plaintiff shall be of opinion that the declaration or plea or subsequent pleading does not disclose sufficient to enable him to proceed with safety, he may apply to the judge to order the pleadings to be amended; and, if necessary, further application may be made to the judge thereon.

Issue.

22. Within eight days after the delivery of the last pleading in the cause, the plaintiff is to deliver to the defendant the issue in the form No. 13, or in a form as near thereto as the circumstances of the case will admit.

Form of the issue.

In Her Majesty's Court of Probate.

The day of 18 . . .

A. B. v. C. D.

A. B., by P. Q., his proctor, solicitor, or attorney, [or in person,] did deliver, to wit, on the day of 18 to the said C. D., his declaration in the words and figures following :

[Here insert declaration at length.]

Whereupon the said C. D. did deliver, to wit, on the day of to the said A. B., his plea, the words and figures following :

[Here insert plea at length.]

[Add any further pleadings.]

Therefore the plaintiff claimed that the cause should be tried as the court shall direct.

Notice of trial.

23. The plaintiff, after delivery of the issue, shall give notice to the defendant that, after the expiration of eight clear days, he intends to apply to the court to try the question at issue before itself, either with or without a jury, or to direct an issue to be tried before a judge of assize, as the case may be; and if the plaintiff do not give such notice within sixteen days from the day on which the issue was delivered the defendant may give a similar notice to the plaintiff. A form or notice, No. 14, is subjoined.

In Her Majesty's Court of Probate.

A. B. v. C. D. to of . . .

Take notice, that after the expiration of eight clear days from the service hereof the plaintiff or defendant in this cause intends to apply to the court to try the question at issue before itself [or by a common or special jury before itself], [or to direct an issue to be tried before the judge of assize by a special or common jury at the next assizes to be holden in and for the county of], [or as the case may be]

Dated this day of 18 . . .

(Signed) A. B. or C. D.

or E. F. proctor, solicitor or attorney
for A. B. or C. D.

24. A copy of every such notice shall be filed in the registry upon the day on which the same is served upon the opposite party in the cause.

25. In each case the judge shall direct, and, if necessary, after hearing the parties, in what mode the cause shall be tried.

26. After the direction of the judge has been obtained as to the mode in which the cause is to be heard, the plaintiff shall, within four clear days, deposit the record of the cause in the registry. The record

is to conclude with a statement of the mode in which the judge has directed the cause to be tried, as in the form No. 15.

The form of record is as follows:—

In Her Majesty's Court of Probate.

The day of 18 .

A. B. v. G. D.

A. B., by E. F., his proctor, solicitor, or attorney, [or in person,] having cited C. D. to appear in support of any interest he may have in the estate and effects of G. H. [or according to the terms of the citation], late of , deceased, who died on or about the day of 18 , at , the said C. D. appeared thereto personally [or by his proctor, solicitor, or attorney]: Whereupon A. B. to wit, on the day of 18 , did deliver his declaration to the said C. D., in the words and figures following :

[Here insert declaration at full length.]

Whereupon the said C. D. did deliver, to wit, on the day of to the said A. B., his plea in the words and figures following :

[Here insert plea at length.]

[Add any further pleadings.]

Whereupon the judge did order, as follows :

[Here set forth the order verbatim.]

Setting down the cause.

27. The plaintiff shall, on the day upon which he sets down the cause as ready for trial, give notice to each party for whom an appearance has been entered of his having done so; and if he delay setting down the cause as ready for trial for the space of one month after the court has directed the mode in which the question at issue shall be tried, the defendant may set the cause down as ready for trial, and give a similar notice to the plaintiff and the aforesaid other parties. A copy of every such notice shall be filed in the registry; and the cause, excepting the judge shall otherwise direct, shall come on in its turn.

Nonappearance.

28. In default of the appearance of the party cited, a record, in form No. 16, or as near thereto as can be, shall be filed in the registry.

In Her Majesty's Court of Probate.

The day of 18 .

A. B. v. C. D.

A. B., by E. F., his proctor, solicitor or attorney, [or in person,] having cited C. D. to appear in support of any interest he may have in

the estate and effects of G. H. [or according to the terms of the citation], late of deceased, who died on or about the day of 18 , at , the said C. D. did not appear personally or by his proctor, solicitor or attorney: whereupon, in default of the appearance of the said E. F., A. B. did file his declaration in the registry in the words and figures following:

[Here insert declaration at full length.]

Therefore A. B. claimed that the cause should be tried as the court shall direct:

Whereupon the judge did direct the said cause to be heard before himself [or as the case may be].

Subpoena.

29. Every subpoena shall be written or printed on parchment, and may include the names of any number of witnesses. The party, or his solicitor or attorney, shall take it, together with a *præcipe* (forms of which are given, marked 17, 18, 19, and 20), to the registry, and there get it signed and sealed, and there deposit the *præcipe*.

Form of Subpoena ad testificandum.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, defender of the faith, to [names of all witnesses included in the subpoena], greeting. We command you and every of you, that, all other things set aside, and ceasing every excuse, you and every of you be and appear in your proper persons before [insert the name of the judge], judge of our Court of Probate at our Court of Probate at on the day of by of the clock in the forenoon of the same day, and so from day to day until the cause or proceeding is tried, to testify the truth according to your knowledge in a certain cause now in our court before our said judge depending, between plaintiff and defendant [or in a certain cause or proceeding now in our court before our said judge depending, in default of the appearance of parties cited, entitled on the part of the [plaintiff, defendant, or as the case may be], and at the aforesaid day, between the parties aforesaid, to be tried [or in default aforesaid, between the parties aforesaid, to be tried]: and this you nor any of you shall in no wise omit, under the penalty of every of you of 100*l*. Witness [insert the name of the judge], at the Court of Probate, the day of in the year of our reign.

(Signed)

Form of Subpoena duces tecum.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith, to [names of all parties included in the subpoena], greeting. We command you and every of you, that, all other things set aside, and ceasing every excuse, you and every of you be and appear in your proper persons

before [insert the name of the judge] judge of our Court of Probate at on the day of by of the clock in the forenoon of the same day, and so from day to day until the cause or proceeding is heard, and also that you bring with you, and produce at the time and place aforesaid [here describe shortly the deeds, letters, papers, &c. required to be produced], then and there to testify and show all and singular those things which you or either of you know, or the said deed or instrument doth import of and concerning a certain cause or proceeding now in our said court before our said judge depending, between plaintiff and defendant, [or a certain cause or proceeding now in our said court before our said judge depending, in default of the appearance of parties cited, and entitled], on the part of the [plaintiff or defendant, or as the case may be], and at the aforesaid day between the parties aforesaid to be tried. And this you nor any of you shall in nowise omit, under the penalty of every of you of 100*l*. Witness [insert the name of the judge], at the Court of Probate, the day of in the year of our reign.

(Signed) E. F., Registrar.

Form of Præcipe for Subpœna ad testificandum.

In Her Majesty's Court of Probate.

Subpœna of W. W., T. W., S. W., G. W., and F. W., to testify between A. B. plaintiff, and C. D. defendant, on the part of the plaintiff [or defendant], the day of 18 .

Signed { A. B. } or { P. A., plaintiff's [or defendant's] proctor,
 { C. D. } { solicitor, or attorney.

Form of Præcipe for Subpœna duces tecum.

In Her Majesty's Court of Probate.

Subpœna for W. W. to testify and produce, &c. between A. B. plaintiff, and C. D. defendant, on the part of the plaintiff [or defendant], the day of 18 .

Signed { A. B. } or { P. A., plaintiff's [or defendant's] proctor,
 { C. D. } { solicitor, or attorney.

Admissions.

30. Either the plaintiff or defendant may call upon the other party, by notice in writing in the form annexed, No. 21, to admit any document, saving any just exceptions; and in case of refusal or neglect to admit the same, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be given except in cases where the omission to give the notice is, in the opinion of the registrar, a saving of expense.

The following is the form of Notice to admit Documents :—

In Her Majesty's Court of Probate.

A. B. v. C. D.

Take notice, that the plaintiff or defendant in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant or plaintiff at on between the hours of and the defendant or plaintiff is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed, as they purport respectively to have been, that such as are specified to be copies are true copies, and such documents as are stated to have been served, sent or delivered, were so served, sent, or delivered respectively, saving all just exceptions, to the admissibility of all such documents as evidence in the cause. Dated, &c.

To A. B., C. D., or to E. F., attorney or solicitor or agent for defendant or plaintiff.

(Signed) C. D., A. B., or G. H., attorney or solicitor or agent for plaintiff or defendant.

[Here describe the documents. The same form may be employed in describing the documents as is now in use in the Common Law Courts.]

Production of documents.

31. Applications for the production of instruments purporting to be testamentary, and shown to be in the possession or under the control of any person or persons, as mentioned in the 26th section of the act, may be made to the judge, on motion or petition, or by summons served on the opposite party in any suit, and upon motion and affidavit in cases where no suit is pending. Forms of subpoenas applicable to these cases are given, Nos. 22, 23, 24, and 25.

Form of Subpœna to bring in a script in a cause :—

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, defender of the faith.

To of .

Whereas there is now proceeding in our Court of Probate a certain business of proving in solemn form of law the last will and testament of A. B. late of deceased, who died on or about at the said will bearing date the day of , 18 , promoted by C. D., the sole executor [or as the case may be] therein named, against E. F., the natural and lawful brother and one of the next of kin of the said deceased [or as the case may be] : and whereas it appears by a certain affidavit of the said C. D. made in the said cause, bearing date the day of , 18 , and now remaining in the registry of our said court, that a certain original paper writing or script,

*purporting to be testamentary, to wit [here describe the paper accurately] is now in your possession or under your control: Now this is to command you, that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the registry, of our said court the aforesaid script, or in case the said script be not in your possession or under your control, that you, within eight days after the service hereof on you, exclusive of the day of such service, do file in the registry of our said court an affidavit to that effect, and therein set forth what knowledge you have of and respecting the said script; and this you shall nowise omit, under the penalty of 100*l*. Witness [insert the name of the judge], at the Court of Probate, the day of 18 , in the year of our reign.*

Indorsement to be made after service.

*This citation was served by I. K. on the within named of
at on the day of 18 . (Signed) I. K.*

Form of Subpoena to a witness to be examined touching a Testamentary Paper of which he is supposed to have knowledge.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, defender of the faith.

*To of , greeting. We command you, that, all other things set aside, and ceasing every excuse, you do appear before A. B., the judge of our Court of Probate, at our Court of Probate, at on the day of 18 , by of the clock in the forenoon of the same day, and so from day to day until you be dismissed by our said judge, to testify the truth according to your knowledge [or to answer to certain interrogatories to be administered to you], touching a certain paper writing or script, purporting to be testamentary, of which reasonable grounds have been furnished to our said judge for believing that you have knowledge. And this you shall nowise omit, under the penalty of 100*l*. Witness [insert the name of the judge], at the Court of Probate, the day of 18 , in the year of our reign.*

Indorsement to be made after service.

This citation was served by I. K. on the within named on the day of 18 . (Signed) I. K.

Form of a Præcipe for a Witness to bring in a Script.

In Her Majesty's Court of Probate.

Subpoena for W. W. to bring into and leave in the registry. [Here accurately describe the script.]

The day of 18 .

(Signed) [A. B. or C. D.], or P. A., plaintiff's [or defendant's] proctor, solicitor or attorney.

Form of Præcipe for a Witness to be examined touching a Testamentary Paper of which he is supposed to have knowledge.

In Her Majesty's Court of Probate.

Subpæna for W. W. to testify respecting a Paper Writing or Script purporting to be testamentary, to wit [describing it], of which he has knowledge, on the part of , this day of .

(Signed) [A. B. or C. D.], or P. A., plaintiff's [or defendant's] proctor, solicitor or attorney.

The Hearing.

32. The hearing of the case shall be conducted in court, and the counsel shall address the court, subject to the same rules and regulations as now obtain in the courts of common law.

33. After the conclusion of the trial, the registrar shall enter on the record the finding of the jury, or the decision of the judge, in a form corresponding as near as may be with that given, Nos. 26 and 27, and shall sign the same.

Entry on the record of a verdict for plaintiff:—

Afterwards, on the day of 18 , before , the judge of Her Majesty's Court of Probate, come the parties within mentioned, by their respective attorneys [or as the case may be] within mentioned, and a jury duly summoned also come, who being sworn to try the matters in question between the parties, upon their oath say, that [state the affirmative or negative of the issue, as it is found for the plaintiff, and in the terms adopted in the pleading.]

[If there be several issues joined and tried, then say] as to the first issue within joined upon their oath say, that [here state the affirmative or negative of issue, as found for plaintiff], and as to the second issue within joined, the jury aforesaid upon their oath say, &c. [so proceed to state the finding of the jury on all the issues]; and that with respect to the costs in the said cause the said judge on the same day [as the case may be] directed [here insert direction as to costs.]

(Signed) A. B. Registrar.

Entry on the record of a judgment for plaintiff:—

Afterwards, on the day of 18 , before the judge of Her Majesty's Court of Probate, come the parties within mentioned, by their respective attorneys [or as the case may be] within mentioned: Whereupon the judge decreed [here insert the tenor of the decree]

(Signed) A. B., one of the registrars of Her Majesty's Court of Probate.

[P.]

F

Citation of heir-at-law.

34. Any person proceeding to prove a will in solemn form, or to revoke the probate of a will, may, if the will affects real estate, apply to the judge for an order authorizing him to cite the heir or heirs-at-law, or other person or persons pretending interest in such real estate; and the judge, on being satisfied by affidavit that the will in question does affect or purport to affect the real estate, shall make an order authorizing the person applying to cite the heir or heirs-at-law, or other such person or persons as aforesaid; provided always, that the judge may make any special directions as to the persons to be cited, which he may think the justice of the case requires.

New trial.

35. An application for a new trial may be made to the Court of Probate in respect to causes tried before a jury within ten days from the day on which the cause was tried, or on the first sitting of the court after the cause has been tried.

Rehearing.

36. An application for a rehearing of any case tried before the judge without a jury, and in which evidence is given *viâ voce*, may be made within ten days from the day on which the same was heard, or at the first sitting of the court after the cause has been heard.

Miscellaneous rules.

37. If the plaintiff or defendant in any cause, unless by leave of the judge previously obtained, fail to deliver the declaration, plea, or other pleading within the time specified in these rules, the other party in the cause shall not be compelled to receive the same, unless by direction of the judge. The expense of every such application to the judge shall fall on the party who has caused the delay.

38. Citations, notices, and other processes heretofore in use and still retained, are to be inserted in the *London Gazette*, and in such of the leading morning and evening papers, and such local papers as the judge may from time to time direct, instead of being served on the Royal Exchange.

39. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used in court, unless by leave of the judge.

40. In contentious business, inventories, and not merely declarations of the personal estate and effects of the deceased, are to be used, unless by order of the judge. The form of inventory is given, No. 28.

The same is as follows :—

A true, full, and particular inventory of all and singular the personal estate and effects of A. B., late of _____, deceased, which have at any time since his death come to the hands, possession, or knowledge of C. D., the sole executor named in the last will and testament of the said A. B. [or administrator, as the case may be], made and exhibited

upon and by virtue of the corporal oath [or solemn affirmation] of the said C. D., as follows, to wit :

First, this exhibitant saith, that the said deceased was at the time of his death possessed of

	£	s.	d.
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[The details of the deceased's effects must be here inserted in as many sheets of paper as may be necessary, and the value inserted opposite to each particular.]

Lastly, this exhibitant saith, that no personal estate or effects of or belonging to the said deceased have at any time since his death come to the hands, possession, or knowledge of this exhibitant, save as hereinbefore set forth. (Signed) C. D.

On the day of 18 , the said C. D. was duly sworn to [or solemnly affirmed] the truth of the above inventory.

Before me,

[Person authorized to administer oaths under the act.]

Notices.

41. All notices required by these rules, or by practice of the court are to be in writing.

The following rules are given as to proceedings by petition:

Proceedings by petition.

45. In proceedings by petition the plaintiff shall, within four clear days after an appearance has been entered for the defendant, or, when the defendant is already before the court, within four clear days from the day upon which he claims to be heard by petition, deliver his act to the defendant, and file a copy thereof in the registry upon one and the same day.

46. The defendant shall, within eight days after the delivery of the act, deliver his answer to the plaintiff, and file a copy thereof in the registry upon one and the same day.

47. The same course shall be pursued until the petition is concluded.

48. Both plaintiff and defendant shall, within eight clear days from the day upon which the petition is concluded, file in the registry such affidavits as may be necessary in support of their several averments therein. A Form of Petition is given, No. 29.

The day of 18 .

A. B. or [A. B., proctor, solicitor or attorney for C. D.], says, that
[Here insert all the facts which are to be alleged.]

Wherefore the said A. B. prays, that

[Here end with the prayer of the petitioner.]

(Signed)

A. B.

The form of the answer is as follows :—

The day of 18 .

E. F., [or E. F., proctor, solicitor or attorney for G. H.], says, that
[Here insert the facts alleged in answer.]

Wherefore the said E. F. prays, that

[Here insert the prayer of the defendant.]

(Signed) E. F.

The reply, rejoinder, &c. (if any such be necessary), are to be followed out in the same form.

The following rules are laid down as to the persons who are entitled to require the proving of a will in solemn form :—

2. Executors or other parties who, previously to the passing of the act, might prove wills in solemn form of law, shall be at liberty to prove wills under similar circumstances, and with the same privileges, liabilities and effect as heretofore.

3. Next of kin and others who, previous to the passing of the act, had a right to put executors or other parties entitled to administration with the will annexed upon proof of the will in solemn form of law, shall continue to possess the same rights and privileges, and be subject to the same liabilities with respect to costs as heretofore.

4. Parties who previously to the passing of the act had a right to intervene in the cause shall continue to possess the same right, subject to the same limitations and the same rules with respect to costs as heretofore.

A legatee may contest a will, and call upon the executor to prove it, but to do this he must first bring into court the amount of his legacy, if he has received it, or any part that he has received : (*Bell v. Armstrong*, 1 Add. 374.)

A creditor cannot contest the validity of the will, unless he has obtained a grant of administration, in which case he may do so without being liable to costs : (*Menzies v. Pulbrook*, 2 Curt. 845.)

A next of kin calling upon an executor to prove a will in solemn form is not ordinarily liable to the payment of costs, although the decree be in favour of the will. But he may be liable, if the proceeding be manifestly groundless and vexatious (*Urquhart v. Fricker*, 3 Add. 57), or if proceedings be taken after long acquiescence not accounted for by special circumstances : (*Bell v. Armstrong*, 1 Add. 375.)

County Court jurisdiction.

Where it shall appear by affidavit of the person applying for probate that the testator had at the time of his death a fixed abode in one of the county districts, and that the

personal estate, not including property held in trust, and without deducting debts, is under the value of 200*l.*, and that the deceased was not at the time of his death beneficially entitled to real estate to the value of 300*l.*, then the judge of the County Court, having jurisdiction over the place where the deceased had his fixed abode, has contentious jurisdiction, and the will may be proved before him: (sect. 56.) It is not obligatory upon the executor to bring the will into the County Court; but if it be brought before the Court of Probate, being a case in which the County Court has jurisdiction, the Court of Probate may send the cause to the County Court to be tried: (sect. 61.)

When a decree for the grant of probate has been made by a County Court judge, the registrar of the County Court transmits to the district registrar a certificate of the decree, under the County Court seal, whereupon probate may be issued on the application of the party in whose favour the decree was made: (sect. 57.)

The affidavit made as to the testator's place of abode and the state of his property is conclusive to authorize the exercise of the County Court jurisdiction. And no grant of probate made under a County Court decree is liable to be impeached, though it afterwards appear that the affidavit was incorrect. But while a case is pending before a County Court, if proof of the incorrectness of the affidavit be given to the County Court judge, he is bound to stay proceedings, leaving the parties to apply to the Court of Probate, and making such order as to costs as he may think just: (sect. 59.)

Rules of evidence.

By sect. 33 of the act, it is enacted that the rules of evidence observed in the superior courts of law at Westminster shall be applicable to and observed in the trial of all questions of fact in the Court of Probate.

In the ecclesiastical courts a single witness in general was not sufficient to prove a fact, though the testimony of one witness, supported by *adminicular*, or corroborative circumstances, *might* be accepted: (Williams on *Executors*, pt. 1, bk. 4, ch. 3.)

It is enacted by 1 Vict. c. 26, s. 17, that "no person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof."

Under this enactment, an executor entitled to a legacy in that character was admitted in the ecclesiastical courts as a witness, provided he released his legacy, otherwise he was considered incompetent on account of interest: (*Munday v. Slaughter*, 2 Curt. 72.) The stat. 6 & 7 Vict. c. 85, s. 1, confers competency on interested witnesses from which it might be inferred that an executor in the case mentioned would not now be called upon to release his legacy, to enable him to give evidence. However it is laid down in the orders relating to wills, dated before January 1, 1838, that a party interested as a legatee cannot be admitted as an attesting witness, unless he first release his interest. Legacies to attesting witnesses (or the wives or husbands of such) are by sect. 15 of 1 Vict. c. 26, made absolutely void, and the intended legatee may be admitted to prove the execution. But a creditor whose debt is charged on the estate (or the wife or husband of such) may be an attesting witness, and be admitted to prove the execution: (*ib.* sect. 16.)

To prove the execution of a will, the attesting witnesses are, if possible, to be examined. But it is not absolutely necessary that the witnesses, if examined, should give testimony to the fact that the will was executed in their presence. They may have forgotten the circumstances, and they may differ as to the account which they are able from recollection to give in such cases; if the will on the face of it appears to be duly executed, the presumption is that it was so, and wills have been accordingly pronounced valid, in cases where the attesting witnesses have actually deposed to circumstances which, if true, would show that the will was not duly executed: (*Blake v. Knight*, 3 Curt. 547; *Cooper v. Bockett*, 3 Curt. 648.)

The ecclesiastical courts were wont to admit the testimony of witnesses skilled in the examination of handwriting, who were called to depose to their opinion, as to whether a writing was or was not that of a particular party, by comparison of it with other writing admitted to be his. Such evidence is not receivable in courts of law (except in the case of ancient writings), nor was it, indeed, considered entitled to great weight even in the ecclesiastical courts: (*Saph v. Atkinson*, 1 Add. 217; *Rutherford v. Maule*, 4 Hagg. 224); and in the Court of Probate it is presumed such evidence will now be inadmissible.

The signature of the testator being properly proved, it will be presumed that he executed it with full knowledge of

its contents, until the contrary is proved. But when the party who prepares and conducts the execution is himself benefited by the will, a sharper degree of scrutiny will be exercised: (*Barry v. Butlin*, 1 Curt. 638.)

Parol evidence.—The stat. 1 Vict. c. 26, requires all wills which come under its operation to be executed and attested in a particular manner, and nothing can be admitted to be proved as a will, which does not exist in writing, executed and attested as required by the act. But with regard to wills made previous to January 1st, 1838, the ecclesiastical courts have occasionally admitted evidence to show that the document propounded as the last will of the testator, and *prima facie* appearing to be such, does not in fact contain his real will, and alterations have been made or omissions supplied in order to bring the document into uniformity with the testator's intentions. Thus a residuary clause has been supplied, when it was proved that the autograph instructions of the testator contained such a clause, but that it had been accidentally omitted by the attorney who prepared the will: (*Blackwood v. Damer*, 3 Add. 239, note.)

Mode of taking evidence.

The act provides that the witnesses, and where necessary the parties, in all contentious matter where their attendance can be had, shall be examined orally by or before the judge in open court: (sect. 31.)

Parties may verify their respective cases by affidavit in whole or in part; but so that every deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of such opposite party, orally in open court, and may after such cross-examination be examined orally in open court by or on behalf of the party filing the affidavit: (*ib.*)

Witnesses out of the jurisdiction of the court, or unable to attend through illness, may be examined by commission: (sect. 32.)

The following rules are laid down as to affidavits:—

46. The addition and true place of abode of every person making an affidavit is to be inserted therein.

47. In every affidavit made by two or more persons, the names of the several persons making it are to be written in the jurat.

48. No affidavit will be admitted in any matter depending in the

Court of Probate in the jurat of which there is any interlineation or erasure.

49. Where an affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the registrar, commissioner, or other person before whom such affidavit is made is to state in the jurat that the affidavit was read in the presence of the party making the same, and that such party seemed perfectly to understand the same, and also that the said party made his or her mark, or wrote his or her signature, in the presence of the registrar, commissioner, or other person before whom the affidavit was made.

50. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his proctor, solicitor, or attorney, or before a clerk of his proctor, solicitor or attorney.

51. Proctors, solicitors and attorneys, and their clerks respectively, if acting for any other proctors, solicitors or attorneys, shall be subject to the rules in respect of taking affidavits which are applicable to those in whose stead they are acting.

CHAPTER IV.

ADMINISTRATION.

When a person dies without making any testamentary disposition of his or her personal property, the law directs it to be applied first in payment of the intestate's debts, and then that the residue be distributed among certain persons, whom both nature and positive law point out as having the first claim to enter into the possession of the property vacated by the deceased. Who these persons are, and the proportions in which they take, is determined in this country by the Statute of Distributions, 22 & 23 Car. 2, c. 10. The duty of winding-up the intestate's affairs, of collecting his property, discharging the liabilities affecting it, and then dividing the residue among the persons beneficially entitled, theoretically belongs to the sovereign, or according to the language of law, it was a prerogative of the Crown. This prerogative was in early times conceded to the Church, and to the ordinary, or spiritual superior of the district where each man lived, was confided the task of disposing of his goods after his decease. The unsatisfactory performance of this duty by the ordinaries led to legislation upon the subject, and the statute 31 Edw. 3, st. 1, c. 11, was passed with the design of placing the matter upon a better footing. By this it was enacted, "that in case a man dieth intestate, the ordinaries shall depute of the next and most lawful friends of the dead person intestate to administer his goods, which persons so deputed shall have action to demand and recover as executors the debts due to the said deceased intestate in the King's Court, to administer and dispend for the soul of the dead; and shall answer also, in the King's Court, to others to whom the said deceased was holden and bound in the same manner as executors shall answer. And they shall be accountable to the ordinaries as executors in the case of testaments, as well as of the time past as the time to come." The administrator was then the officer of the ordinary, and accountable to him for the performance of his duty. The new statute resumes the administrative prerogative of the Crown, and provides for its exercise through the medium of

the Court of Probate. Henceforth, therefore, administrators must be considered officers of the Crown, and their title and authority, formerly derived from the ordinary, will now flow immediately from the Crown.

It may be well to remind unprofessional readers that persons however beneficially entitled to the participation in or exclusive enjoyment of the effects of a deceased person, cannot legitimately possess themselves of the property, nor can they do any valid acts regarding it, until the authority of letters of administration has been obtained. The Stamp Act, 55 Geo. 3, c. 184, imposes a heavy penalty (see *infra*) upon persons taking possession of or administering the effects of deceased persons, without obtaining letters of administration within six calendar months from the deceased's death, or, in case there be a suit as to the right of administration not ended within four calendar months of the death, then within two calendar months from the termination of the suit. When letters of administration have been obtained, their effect is to vest the personal estate of the deceased in the administrator, only from the date of the grant: (*Woolley v. Clark*, 5 B. & Ald. 745.)

Yet they so far operate in relation back to the time of the intestate's decease, as to confer a right of action against any person who may have intermeddled with or appropriated the deceased's goods in the interval between his death and the grant: (*Foster v. Bates*, 12 Mees. & W. 233.) Upon the death of a person intestate, therefore, the first question for consideration among those who may be interested in the distribution of his effects is, who is the person entitled to administer. We have seen that the statute of Edw. 3, directed the ordinary to depute the "next and most lawful friends" of the deceased for this purpose. Afterwards the stat. 21 Hen. 8, c. 5, s. 3, provided, that in cases of intestacy, or of a refusal of an executor named in a will to prove it, the ordinary should grant administration "to the widow of the deceased, or to the next of his kin, or to both," as the ordinary in his discretion should think good, and further, that where several persons claimed as next of kin, the ordinary should be at liberty to grant administration to one only of them.

Usage and the decisions of courts have long reduced the discretion thus given to ordinaries to tolerably fixed rules, among which a leading one is that the widow is ordinarily preferred to the next of kin: (*Stretch v. Pynn*, 1 Cas. temp. Lee, 30; *Goddard v. Goddard*, 3 Phill. 638.)

But administration may be granted to the widow as to a part, and to the next of kin as to another part of the intestate's effects, in which case neither can complain, as the court need not have granted any part of the administration to the party complaining. But if the intestate leave a fund of 100*l.*, administration cannot be granted of 50*l.* to one person and of 50*l.* to another, because this is an entire thing: (*Fawtry v. Fawtry*, 1 Salk. 36.)

Also the widow may be set aside, and the next of kin preferred for certain causes, as where she is barred of interest in her husband's effects by settlement: (*Walker v. Carless*, 2 Cas. temp. Lee, 560); when she has become lunatic: (*In the goods of Williams*, 3 Hagg. 217); for elopement or separation from her husband, followed by cohabitation with another man: (*Chappell v. Chappell*, 3 Curt. 429; *Fleming v. Pelham*, 3 Hagg. 217, note (b)); when she has been divorced on the ground of adultery: (*In the goods of Davies*, 2 Curt. 628.) But second marriage in not a sufficient ground: (*Webb v. Needham*, 1 Add. 496.)

Supposing the deceased not to have left a widow, or that for some reason her claim is rejected, it becomes necessary to consider with whom the next claim lies, and with regard to proximity of kindred, the mode of computation of the civil law (2 Blackstone, 504) has been adopted, as in the following table, in which the number attached to each name denotes the degree of kindred in which each of the relations named stands to the intestate:—

Son 1	Father 1	Grandfather.. 2	Great-gr and- father .. 3
Grandson .. 2	Brother .. 3	Uncle 3	Great-uncle.. 4
Great-grand- son 3	Nephew .. 3	Cousin-ger- man.. .. 4	Great-uncle's son 5
	Great-nephew 4	Cousin-ger- man's son 5	Second cousin 6

Thus it appears that several relatives of different kinds stand in equal degrees of proximity, as the father and the son of the intestate, who stand both in the first degree of proximity; the great-grandfather, great-grandson, uncle and nephew, all of whom stand in the third degree. It must be understood, that the corresponding female relatives may be substituted in the above table, a mother, sister, or niece, being in the same degree of proximity as a father, brother, or nephew. Also a relative of the half-blood, as far as mere proximity is concerned, is on a par

with one of the same denomination of the whole blood. In determining the choice of an administrator, therefore, it becomes necessary to introduce some further considerations than that of proximity alone.

And it has been an established rule of the ecclesiastical courts, that the right to administration of the effects of an intestate follows the right of property in them, so that of two relatives standing in an equal degree of proximity, the one to whom the right of property belongs will be preferred for administrator : (*In the goods of Gill*, 1 Hagg. 342.)

The Statute of Distributions, as construed and explained by the various decisions which have been given upon its not very lucid enactments, supplies the following code of rules :

If a man die intestate, leaving a widow and children, the widow takes one-third, the children the remaining two-thirds equally : (*Palmer v. Garrard*, Prec. Cha. 21.)

If he leaves a widow, but no children or descendants, the widow takes a moiety, and the other moiety is divisible among the next of kin.

If he leaves no widow, the whole is divisible among his children equally.

If some of his children die in his lifetime, leaving children, such children are the representatives of their parents, and take their parents' shares *per stirpes*.

If all his children die in his lifetime, leaving children, then the testator's grandchildren take *per capita* and not *per stirpes* : (*Bowers v. Littlewood*, 1 P. Wms. 593.)

Lineal descendants to the farthest degree are entitled before ascendants or collaterals.

If the intestate leave neither widow, children, nor lineal descendants, his father, if alive, is entitled to the whole of his personalty ; if the father be dead, the mother, brothers and sisters take in equal shares (1 Jac. 2, c. 17, s. 17) ; and children of deceased brothers and sisters represent their parents. This representation extends no farther than the children of brothers and sisters : (*Pett's case*, 1 P. Wms. 27 ; *Bowers v. Littlewood*, 1 P. Wms. 593.)

If there be neither mother, brother, sister, nor brother's or sister's children, then all relations of whatever denomination who stand next in degree of kin to the intestate come in for an equal share, paternal and maternal relations standing on an equal footing : (*Moor v. Barham*, 1 P. Wms. 53.)

The case of a married woman dying intestate is not referred to in any of the above regulations. Her case is altogether

peculiar and is excepted from the Statute of Distributions by the stat. 29 Car. 2, c. 3, s. 25, which declares that the husband of *femes covert* dying intestate may demand and have administration of their rights, credits, and other personal estates, and recover and enjoy the same as they might have done before the making of the said act. The common law right of the husband to the personal property of his wife, not reduced into possession by him during her life, is thus recognised, and his claim to the administration of his wife's effects stands upon a higher ground than that of all other administrators, whose authority is merely founded upon statutory enactment. It is a right which has always been held to be beyond the discretion of the ordinary, so that the court had no choice but to grant administration to the husband if he demanded it. If, however, it happens that the husband dies before having obtained administration to his wife, the question arises, who is then entitled to administration; and notwithstanding the beneficial interest vests in the representatives of the husband, the courts, having considered themselves bound by the words of the statute, have granted administration to the next of kin of the wife (at the time of her decease); the courts of equity holding such grantees as mere trustees for the husband's representatives: (*Squib v. Wyn*, 1 P. Wms. 381.) The inconvenience of this practice has been the subject of complaint (*In the goods of Gill*, 1 Hagg. 341), and possibly the 73rd section of the new act may be held by the Court of Probate to remove the necessity of an adherence to the rule. This section enacts that in every case of total intestacy, where it appears to the court *necessary or convenient*, by reason of the insolvency of the estate of the deceased, or *other special circumstances*, to appoint some other person administrator than the person who would, under the old state of the law, have been entitled, it shall not be obligatory upon the court to grant administration to such person, but such other person may be appointed as the court shall think fit.

Interest Causes.

The following orders apply to the mode of pleading in *interest causes*, that is where the right to administration is disputed between two or more persons, each of whom, in the absence of the other, might be *primâ facie* entitled.

42. In interest causes, as heretofore, each party shall be at liberty to deny the interest of the other; and in such cases both parties may, with and subject to the permission of the judge, adduce proof on one and the same trial of their interest respectively.

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43. In interest causes the pleading of each party must show on the face of it that no other person exists having an interest superior to that of the claimant.

44. Forms of the declaration and plea in an interest cause are given No. 9, and No. 11. (These forms have been set out before, pp. 40, 41.)

When several persons in equal degree of kin to the intestate claim administration, it becomes necessary for the court to exercise its discretionary power of choice, and the first object is to confide the estate to the person most calculated to administer it for the personal benefit of parties interested, and the wishes of the majority of such parties will *primâ facie* be attended to: (*Earl of Warwick v. Greville*, 1 Phill. 123.)

Although the relative of the half-blood is equally near, in point of kindred, with the relative of the same denomination of the whole blood, and is also equally entitled beneficially under the Statute of Distributions, yet the relative of the whole blood has been sometimes preferred to him of the half-blood: (*Mercer v. Morland*, 2 Cas. temp. Lee, 499.)

An elder brother will be preferred to a younger, only in cases where there is no other consideration whatever to guide the choice of the court: (*Earl of Warwick v. Greville*, 1 Phill. 125.)

A man of business will be preferred to another, other things being equal: (*Williams v. Wilkins*, 2 Phil. 100.)

Bastardy.—If a bastard die intestate, without wife or child, the Crown is entitled to his goods, subject to his debts (*Megit v. Johnson*, 2 Dougl. 548), and, in most cases, it has been usual for the ordinary to grant administration to the nominee or patentee of the Crown: (*Jones v. Goodchild*, 3 P. Wms. 33, 34.) The title of the Crown may, however, be defeated on very slight grounds. A person claiming a remote relationship, of which the evidence was little more than general reputation, has been held entitled to administration as against the nominee of the Crown: (*Stote v. Tyndull*, 2 Cas. temp. Lee, 394.)

The rules are the same with regard to any intestate who dies without leaving any ascertainable kindred. In all such cases the following order applies:

62. In all cases where application is made for letters of administration (either with or without a will annexed) of the goods of a bastard dying a bachelor, or a spinster, or a widower, or widow, without issue,

or of a person dying without known relation, notice of such application is to be given to Her Majesty's Procurator-General, in order that he may determine whether it will be expedient to interfere on the part of the Crown; save and except that when the deceased is domiciled within the Duchy of Lancaster, notice is to be given to the solicitor for the Duchy in London; and no grant is to be issued until that officer has signified the course it will be proper to take under the circumstances of each particular case.

Creditor's Administration.

Where the next of kin decline to take out administration, it has been customary to grant it to a creditor, on the ground that until representation is made to the deceased, the debt cannot be paid: (*Elme v. Dacosta*, 1 Phill. 177.) But administration will be granted to a creditor only when no other representative can be found: (*ib.*)

When a creditor applies for administration the next of kin and others in general must be cited to accept or refuse letters of administration.

Formerly, a citation directed to all people in general was affixed in some public place at the Royal Exchange. The following order is applicable to such citations:

58. Citations against all persons in general, and other instruments, heretofore required to be served by affixing them in some public place, are in future to be served by the insertion of the same as advertisements in such of the leading morning and evening papers, and such of the local papers, as the judge may from time to time direct. Such citations can only be allowed to issue in cases where there is an affidavit to lead them.

Administration may be granted to several creditors jointly, but the court prefers that one should be fixed upon: (*Harrison v. All persons in general*, 2 Phill. 249.)

A creditor having been once appointed administrator, cannot afterwards be displaced by the next of kin. When he dies the next of kin may have administration *de bonis non* if anything remains to be administered: (*Skeffington v. White*, 1 Hagg. 702.)

It was an established rule of the ecclesiastical courts, under the old system, that wherever a party had a prior legal right to administer, such person must be cited or consent before administration could be granted to any other. And this rule even extended to the case when the party having the right had no interest in the property: (*In the goods of Barker*, 1 Curt. 592.) The court has occasionally exercised the discretion left to it by the statute, and dis-

pensed with the citation of a person who, under its ordinary practice, would have had a prior title to the party claiming: (*In the goods of Rogerson*, 2 Curt. 656.) This practice will probably be modified by the enlarged discretion given to the court (by sect. 73) of granting administration as it may think fit, when *special circumstances* exist.

Incompetency.

Several grounds of incompetency exist, which will justify the court in refusing administration to a person otherwise entitled. Idiocy or lunacy, outlawry, bankruptcy, and in short almost every species of legal disability are sufficient grounds (Toller, 93); and certain statutory enactments exist incapacitating persons convicted of certain offences from becoming executors or administrators. Thus, persons asserting that there are more gods than one, denying the truth of the Christian religion, or the authenticity of the Holy Scriptures, are by 9 & 10 Will. 3, c. 32, upon a second conviction, rendered incompetent to become executors and administrators.

A married woman may be an administratrix. But the consent of her husband is necessary, as she cannot herself enter into the administration bond. But if the husband be abroad or incompetent, a stranger may be joined in the security in his stead: (Toller, 91.) A woman legally separated from her husband under the Matrimonial Act, being a *feme sole*, for the purposes of contract (20 & 21 Vict. c. 85, s. 26), as long as the separation exists, may, it is presumed, be constituted an administratrix.

How to obtain administration.

Letters of administration are granted at the various registries to the person who shows himself properly entitled. If the intestate person had, at the time of his death, no fixed abode in any of the provincial districts, application for administration must be made at the principal registry. If the intestate had a fixed place of abode in one of the districts, then application may be made either at the principal or at the district registry at the option of the person applying.

An affidavit stating the place of abode must be made by the person or one of the persons applying for letters of administration, and if there be no contention as to the right to administration (sect. 48), and no doubt on the mind of the registrar on the claim of the person applying (sect. 50), the grant will issue in the name of the Court of Probate.

The following is the form of the oath which the administrator is required to make :—

In Her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B. deceased.

I C. D. of _____ in the county of _____ make oath and say [or solemnly affirm], that A. B. late of _____ deceased, died a bachelor, without parent, brother or sister, uncle or aunt, nephew or niece, and intestate, and that I am the lawful cousin german and one of the next of kin of the said deceased [this must be altered in accordance with the circumstances of the case]; that I will faithfully administer the personal estate and effects of the said deceased, by paying his just debts, and distributing the residue of his estate according to law; that I will exhibit an inventory and render an account of my administration whenever required by law so to do; that the said deceased died at _____ on the _____ day of _____ 18 ____; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of _____ pounds, to the best of my knowledge, information and belief. (Signed) A. B.

Sworn at _____ this _____ day of _____ 18 __, before me,

The Stamp Act requires an affidavit to a similar effect to be transmitted to the Commissioners of Inland Revenue. The following is the form given :—

In Her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B., deceased.

The _____ day of _____ 18 ____.

I C. D. of ⁽¹⁾ _____ the party applying for letters of administration of the personal estate and effects of the said A. B., late of _____ make oath [or solemnly affirm] and say as follows : That the said deceased died on or about the _____ day of _____ one thousand _____ hundred and _____ at ⁽²⁾ _____, and that the personal estate and effects of the said deceased which he any way died possessed of or entitled to, and for or in respect of which letters of administration are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person and persons, and not beneficially [if leaseholds insert clause No. 1 hereon indorsed], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of _____ pounds, to the best of my knowledge, information, and belief [if no leaseholds insert clause No. 2 hereon indorsed.] (Signed) C. D.

Sworn at _____ on the _____ day of _____ before me [person authorized to administer oaths under the act.]

⁽¹⁾ Insert the names, residences, titles or profession of the person making the affidavit.

⁽²⁾ Insert place of death, or set forth the reason why the same cannot be furnished.

Form of Leasehold Clause, No. 1.

Including the leasehold estate or estates for years of the said deceased, whether absolute or determinable on a life or lives.

Form of Leasehold Clause, No. 2.

And I [or we] lastly make oath, that the said deceased was not possessed of or entitled to any leasehold estate or estates for years, whether absolute or determinable on a life or lives, to the best of my [or our] knowledge, information, and belief.

The Stamp Act imposes a penalty, upon any person administering without taking out letters of administration within six months of the intestate's death, similar to that imposed upon executors.

The following orders have been made :—

37. No letters of administration shall issue until after the lapse of fourteen clear days from the death of the deceased, unless under the direction of the judge.

38. The registrars may, in cases where they deem it necessary, require proof, in addition to the oath of the executor or administrator, of the identity of the deceased, or of the party applying for the grant.

39. Where administration is applied for by one or some of the next of kin only, there being another or other next of kin equally entitled thereto, the registrars may require proof by affidavit or statutory declaration that notice of such application has been given to such other next of kin.

40. The oath of administrators, and of administrators with the will annexed, is to be so worded as to clear off all persons having a prior right to the grant, and the grant is to show on the face of it how the prior interests have been cleared off.

41. The usual oath of administrators is, as well as that of executors and administrators with the will, to be reduced into writing, and to be subscribed and sworn by them as an affidavit, and then filed in the registry.

The registrar having been properly satisfied of the interest and title of the applicant, letters of administration will be issued in the following form :

In Her Majesty's Court of Probate. The Principal Registry.

Be it known, that on the day of 18 , letters of administration of all and singular the personal estate and effects of A. B., late of deceased, who died on or about 18 , at intestate, were granted by Her Majesty's Court of Probate to C. D. of the widow [or as the case may be] of the said intestate, she having been first sworn well and faithfully to administer the same, by paying his just debts, and distributing the residue of his personal estate and effects according to law, and to exhibit a true and perfect

inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

Extracted by (Signed) E. F., Registrar.
(L.S.)

*Sworn under £ , and that the in- } To be written in the margin of
testate died on the day of 18 . } administration.*

A party properly entitled to administration may renounce, and the following form of renunciation has been supplied:—

In Her Majesty's Court of Probate. The Principal Registry.

Whereas A. B., late of in the county of deceased, died on the day of 18 , at intestate, a widower; and whereas I, C. D. of , am his natural lawful child, and his only next of kin:

Now I, the said C. D. , do hereby declare that I have not intermeddled in the personal estate and effects of the said deceased, and do hereby expressly renounce all my right and title to the letters of administration of the personal estate and effects of the said deceased [add in cases where a proctor, solicitor, or attorney appears for the person renouncing, and I hereby appoint E. F. of my proctor, solicitor, or attorney, to file or cause this renunciation to be filed for me in the principal registry of Her Majesty's Court of Probate.]

In witness whereof I have hereto set my hand and seal this day of 18 . C. D.

Signed, sealed, and delivered by the said C. D. in the presence of
G. H.

[One disinterested witness sufficient.]

Such renunciation, however, may be retracted before the administration has passed the seal: (*West v. Wilby*, 3 Phill. 379.) The 79th section of the act, of which the object appears to be to make a renunciation by an executor irrevocable, does not extend to persons entitled to administration.

The following orders require to be attended to:—

34. In all administrations of a special character the recitals in the oath and in the letters of administration must be framed in accordance with the facts of the case.

31. Whenever the court under sect. 73 appoints an administrator other than the person who prior to the act would have been entitled to the grant, the same is to be made plainly to appear in the oath of the administrator, in the letters of administration, and in the administration bond.

45. In the case of persons residing out of England, administrations with the will annexed, and administrations, may be granted to their attorney, acting under a power of attorney duly attested.

In several points of detail the formalities to be observed

in granting letters of administration, resemble those observed in granting probate, and it may be sufficient to refer to the rules and orders which are given *in extenso* in the Appendix.

An administration may be opposed in like manner as the grant of probate, and by the means and ways which have been previously described. The same rules as to caveats and citations apply, and the processes which follow are exactly the same.

Administration bond.

The statute 21 Hen. 8, c. 5, s. 3, required the ordinary to take security from the party to whom administration was granted for the due performance of the duties of the office. The stat. 22 & 23 Car. 2, c. 10, s. 1, directed the ordinaries upon granting administration to take bonds with two or more able sureties, respect being had to the value of the estate; and the act prescribed the form and condition of the bond to be taken.

The new statute (sect. 80) repeals these two enactments, and in lieu of them enacts (sect. 81), that every person to whom administration is committed, shall give bond to the judge of the Court of Probate, and if the court or district registrar require, with one or more surety or sureties, conditioned for *duly collecting, getting in and administering* the personal estate of the deceased. The following is the form of the bond:—

Know all men by these presents, that we, A. B. of _____, C. D. of _____, and E. F. of _____, are jointly and severally bound unto G. H., the judge of Her Majesty's Court of Probate in the sum of _____ pounds of good and lawful money of Great Britain, to be paid to the said G. H. or to the judge of the said court for the time being, for which payment well and truly to be made we bind ourselves and _____ of us for the whole, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the _____ day of _____ in the year of our Lord one thousand eight hundred and _____.

The condition of this obligation is such, that if the above named A. B., the [as the case may be] of I. J., late of _____ deceased, who died on the _____ day of _____ do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased which have or shall come to _____ hands, possession or knowledge, or into the hands and possession of any other person for _____, and the same so made do exhibit or cause to be exhibited into the principal registry of Her Majesty's Court of Probate, whenever required by law so to do, and the same personal estate and effects, and all other the personal

estate and effects of the said deceased at the time of death, which at any time after shall come to the hands or possession of the said , or into the hands or possession of any other person or persons for , do well and truly administer according to law; (that is to say), do pay the debts which did owe at decease, and further do make or cause to be made a true and just account of said administration whenever required by law so to do; and all the rest and residue of the said personal estate and effects do deliver and pay unto such person or persons as shall be entitled thereto, under the act of Parliament intituled "An Act for the better settling of intestates estates;" and if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors therein named do exhibit the same into the said court, making request to have it allowed and approved accordingly, if the said , being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said court, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed, and delivered in the presence of
K. L., Registrar.

[or
O. P., a clerk in the Principal Registry of
Her Majesty's Court of Probate.]

The following form applies when administration is granted with the will annexed :—

Know all men by these presents, that we, A. B. of , C. D. of , and E. F. of , are jointly and severally bound unto G. H., the judge of Her Majesty's Court of Probate, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said G. H., or to the judge of the said court for the time being, for which payment well and truly to be made we bind ourselves and of us for the whole, our heirs, executors and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and .

The condition of this obligation is such, that if the above named A. B., the [as the case may be] of I. J., late of deceased, who died on the day of do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estates and effects of the said deceased which have or shall come to hands, possession, or knowledge, and the same so made do exhibit or cause to be exhibited into the principal registry of Her Majesty's Court of Probate, whenever required by law so to do, and the same personal estate and effects do well and truly administer, (that is to say) do pay the debts of the said deceased which did owe at decease, and then the legacies

contained in the said will annexed to the said letters of administration, so to committed, as far as personal estate and effects will thereto extend, and the law charge, and further do make or cause to be made a true and just account of said administration when shall be thereunto lawfully required, and all the rest and residue of the said personal estate and effects shall deliver and pay unto such person or persons as shall be by law entitled thereto, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed, and delivered in the presence of

K. L., Registrar

[or

O. P., a clerk in the Principal Registry of
her Majesty's Court of Probate.]

The sureties are required to make the following oath, or justification as it is commonly called:—

In Her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B. deceased.

The day of 18 .

We, C. D. of and E. F. of, jointly and severally make oath, that we are the proposed sureties on behalf of G. H., the intended administrator of all and singular the personal estate and effects of the said A. B., late of deceased, in the penal sum of pounds, for his faithful administration of the said personal estate and effects of the said deceased; and I the said C. D. for myself make oath, that I am, after payment of all my just debts, well and truly worth in money and effects the sum of ; and I the said E. F. for myself make oath that I am, after payment of all my just debts, well and truly worth in money and effects the sum of pounds.

Same day the said C. D. and E. F. were duly sworn
to the truth of this affidavit.

Before me,

[Person authorized to administer oaths under the act.]

32. The registrars are to take care (as far as possible) that the sureties to administration bonds are responsible persons.

The declaration, or inventory, of the estate and effects of the testator or intestate, which the administrator is required to make, is in form following:—

A true declaration of all and singular the personal estate and effects of A. B., late of , deceased, who died on the day of at , and had at the time of his death a fixed place of abode at within

the district of _____, which have at any time since his death come to the hands, possession, or knowledge of C. D., the administrator with the will of the said A. B. [or administrator, as the case may be], made and exhibited upon and by virtue of the corporal oath [or solemn affirmation] of the said C. D., as follows, to wit:

First, this declarant declares that the said deceased was at the time of his death possessed of or entitled to

	£	s.	d.
--	---	----	----

[The details of the deceased's effects must be here inserted, and the value inserted opposite to each particular.]

Lastly, this declarant saith, that no personal estate or effects of or belonging to the said deceased have at any time since his death come to the hands, possession, or knowledge of this declarant, save as is hereinbefore set forth.

(Signed) C. D.

On the _____ day of _____ 18____ the said C. D. was duly sworn to [or solemnly affirmed] the truth of the above inventory,

Before me,

[Person authorized to administer oaths under the act.]

Formerly, when an administration bond became forfeited, and the parties interested in the property were desirous of putting it in suit in a court of law, the course was to petition the ecclesiastical court to order the bond "to be attended with:" (1 Williams *Exec.* pt. 1, bk. 5, ch. 4.)

The new statute enacts (sect. 83) that the court may, on application on motion or petition in a summary way, and on being satisfied that the condition of the bond has been broken, order one of the registrars of the court to assign the same to some person, to be named in the order, and such person, his executors, or administrators, shall be entitled to sue upon the bond, in his own name, at law and in equity, and to recover thereon as trustee for all persons interested.

The only point, it will be observed, that it is necessary, under this section, to prove to the Court of Probate, in order to obtain an assignment of the bond, is that the condition has been broken. The ultimate liability of the sureties, is a matter to be decided by the court in which the bond is put in suit: (*Devey v. Edwards*, 3 Add. 68.)

And even the question of the breach of condition will still remain an open question for the same court to decide, the order of the Court of Probate going no further than to cause an assignment of the bond, for the purpose of enabling it to be sued upon in the ordinary way: (see as to the old practice, *Younge v. Skelton*, 3 Hagg. 780.)

Whether a bond which has been given to an ecclesiastical court previous to the commencement of the act, passes to the Court of Probate under sect. 83, so as to be on the

same footing as a bond given to the judge of the Court of Probate, under the act, is open to doubt. In a recent case of the kind, the court ordered a bond of this sort to be assigned by one of the registrars, so that it might be put in suit at common law, leaving the common law court to decide the question of its validity or invalidity: (*Young v. Oxley*, 6 W. R. 308.)

Administration cum testamento anexo.

This kind of administration is granted when the deceased has left a will, but has failed to appoint an executor thereof, or where an executor having been duly appointed, that person refuses to undertake the execution of the will, or dies without having done so, or after having proved the will, dies without having fully administered the deceased's effects, and without himself leaving a will. ⁽¹⁾

In such a case it becomes necessary to appoint some person to administer the effects of the deceased in conformity with his will, and this person is called for distinction's sake the administrator with the will annexed, although the duties which he has to perform correspond closely with those of a regular executor.

The administrator is required to take the following oath :

In Her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B. deceased.

I C. D. of in the county of make oath and say [or solemnly affirm], that I believe this paper writing [or these paper writings] hereunto annexed to contain the true and original last will and testament [or the last will and testament with codicils] of A. B. late of in the county of deceased, and that the executor therein named is dead without having taken probate thereof [or as the fact may be], and that I am the residuary legatee in trust named therein [or as the fact may be], and that I will faithfully administer the personal estate and effects of the said deceased according to the tenor of his will [or will and codicils] by paying his just debts and the legacies contained in his will [or will and codicils], and distributing the residue of his estate according to law; that I will exhibit an inventory and render an account of my administration whenever required by law so to do; that the testator died at on the day of 18 ; and that the whole of the personal estate and effects of the said deceased does not amount in value to the

⁽¹⁾ The estate and duties of an executor pass to his executor, not so to his administrator if he die intestate.

sum of *pounds, to the best of my knowledge, information, and belief.*

(Signed) C. D.

Sworn at *this* *day of* 18 , *before me*

Each testamentary paper to be marked by the persons sworn and the persons administering the oath.

Affidavit for the Commissioners of Inland Revenue.—For Administrators with the Will annexed.

In Her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B., deceased.

The *day of* 18 .

I C. D. of ⁽¹⁾ *the party applying for administration with the will* ⁽²⁾ *annexed of the personal estate and effects of A. B., late of* , *deceased, make oath [or solemnly affirm], that the said deceased died on or about the* *day of* *one thousand* *hundred* *and* *at* ⁽³⁾ *, and that the personal estate and effects of the said deceased, which he any way did possessed of or entitled to, and for or in respect of which letters of administration with the said will* ⁽²⁾ *annexed are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially [if leaseholds insert clause No. 1 hereon indorsed], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of* *pounds, to the best of my knowledge, information, and belief* [if no leaseholds insert clause No. 2 hereon indorsed].

(Signed) C. D.

Sworn at *on the* *day of* *before me* [person authorized to administer oaths under the act].

⁽¹⁾ *Insert the names, residences, and titles or professions of the persons making the affidavit.*

⁽²⁾ *Insert codicils, if any.*

⁽³⁾ *Insert the place of death, or set forth the reason why the name cannot be furnished.*

Form of Leasehold Clause, No. 1.

Including the leasehold estate or estates for years of the said deceased, whether absolute or determinable on a life or lives.

Form of Leasehold Clause, No. 2.

And I [or we] lastly make oath, that the said deceased was not possessed of or entitled to any leasehold estate or estates for years, whether absolute or determinable on a life or lives, to the best of my [or our] knowledge, information, and belief.

[P.]

H

The question as to the person entitled to an administration of this kind, depends partly upon the statute 21 Hen. 8, c. 5, which enacts, as we have seen, that in case "that the executors named in any testament refuse to prove it," the ordinary shall grant administration to the widow of the deceased, or to the next of kin, or to both, at discretion. In such cases, therefore, the choice of an administrator *cum testamento annexo* will depend upon the same rules and principles as have been before developed in cases of ordinary administration.

When, however, the case is one not falling within the statute, as for instance, when the testator has failed to appoint any executor at all, or where an executor has died intestate, and leaving the work of administration incomplete, the ecclesiastical courts not being bound by any other considerations than those of equity and utility, it has been the practice to consider which of the claimants to administration has the greatest interest in the effects (*In the goods of Gill*, 1 Hagg. 341), and to make the grant accordingly.

In such cases, therefore, a residuary legatee is preferable to the next of kin, and this principle has even been acted on in cases falling strictly within the act, viz., where an executor has been appointed, and has refused to act: (*In the goods of Gill*, 1 Hagg. 341.)

In case of the death of a residuary legatee, without having received a grant of administration, the right descends to his representative, and will be granted accordingly: (*Jones v. Beytagh*, 3 Phill. 635.)

If there be no residuary legatee, the person next entitled to administration is the next of kin (*Kooystra v. Buyskes*, 3 Phill. 531), but if the next of kin decline, administration may be granted to a legatee or a creditor: (*ib.*)

The party having a prior title must be cited before administration is committed to another person: (*In the goods of Barker*, 1 Curt. 592.)

The following is the form of letter of administration with the will annexed:

In Her Majesty's Court of Probate. The Principal Registry.

Be it known, that A. B., late of in the county of deceased, who died on or about the day of , at , made and duly executed his last will and testament and did therein name . And be it further known, that on the day of 18 , letters of administration with the said will an-

needed of all and singular the personal estate and effects of the said deceased were granted by Her Majesty's Court of Probate to C. D. [insert the character in which the grant is taken], he having previously been sworn well and faithfully to administer the same according to the tenor of the said will to pay the just debts of the said deceased, and to exhibit a true and perfect inventory of all and singular the said personal estate and effects and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F., Registrar

(L. S.)

Extracted by
Sworn under £ *and that the testator died on or about*
the *day of* 18 .

The following forms apply to the case of an administration with a will annexed, which has been made by a married woman under a power :—

In Her Majesty's Court of Probate. The Principal Registry.

Be it known, that A. B., wife of C. B., late of *in the county of* *, died on the* *day of* 18 , *at* *, and having during her coverture with the said C. B., by virtue of certain powers and authorities given to and vested in her by a certain indenture of settlement bearing date the* *day of* 18 , *and of all other powers and authorities her enabling, made and executed her last will and testament bearing date the* *day of* 18 , *and thereof appointed her said husband, the said C. B., sole executor, and that the said C. B., as the lawful husband of the said deceased, is the sole person entitled to her personal estate and effects, over which she had no disposing power, and concerning which she is dead intestate. And be it also known, that on the* *day of* 18 *letters of administration (with the said will annexed) of all and singular the personal estate and effects of the said deceased were granted and committed by her Majesty's Court of Probate to the said C. B., on his giving the usual security, he having been sworn well and faithfully to administer the same, to pay whatever debts the said deceased at the time of her death did owe, and to exhibit a true and perfect inventory of all and singular her personal estate and effects, and to render a just account thereof whenever required by law so to do.*

(Signed) J. S., Registrar.

(L. S.)

Extracted by
Sworn under 100l., and that the testatrix died on the *day of* 18 .

Form of Special Administration of the rest of the Goods of a Married Woman.

In Her Majesty's Court of Probate. The Principal Registry.

Be it known, that A. B. [wife of C. B.], late of *in the county of* *, died on the* *day of* 18 , *and having during*

her coverture with the said C. B., by virtue of certain powers and authorities vested in her by a certain indenture bearing date the day of 18, and made between D. E. of in the county of esquire, of the first part, the said C. B., therein described of in the county of gentleman, of the second part, and the said A. B. by her then name and description of A. F. of in the county of widow, and G. H. of the same place, esquire, of the third part, made and executed her last will and testament, bearing date the day of 18, and thereof appointed E. F. and G. H. executors. And be it also known, that on the day of 18, probate of the said will, limited to the administration of all such personal estate and effects as she the said deceased, by virtue of the said indenture, had a right to appoint or dispose of, and hath in and by her said will appointed or disposed of accordingly, but no further or otherwise was granted by authority of to the said E. F. and G. H., the executors named in the said will. And be it further known, that on the day of 18, letters of administration of the rest of the personal estate and effects of the said A. B. deceased were granted to the said C. B. the lawful husband of the said deceased, he having been first sworn faithfully to administer the same, and to exhibit a true and perfect inventory thereof, and also to render a just and true account thereof whenever required by law so to do.

(Signed) R. S., Registrar.

Extracted by

(L. S.)

Sworn under £, and that the deceased died on the day of 18.

Administration de bonis non.

Where a sole executor having proved the will of his testator, dies without having administered the whole of the effects, and also without himself leaving an executor, it becomes necessary for some person to obtain from the Court of Probate the right to administer the effects which remain (*bonis non administratis*.) If a sole executor die, having duly proved the will, and having himself made a will and appointed an executor, administration *de bonis non* will not be necessary, as the interest in the first testator's effects descends, or is transmitted, to the executor's executor; nor if one of several executors die, whether he has appointed an executor or not, as the interest in the testator's effects devolves entire upon the co-executors whom he leaves surviving, and no part of it goes to his own executor: (Williams on *Executors*, pt. 1, bk. 3, ch. 4.) Formerly, when there were several executors, one of whom alone proved the will, the rest renouncing, if the executor who proved died, the others who had not proved might retract their renunciation, and constitute themselves executors: (*Arnold v. Blencowe*,

1 Cox, 426.) The new act (sect. 79) makes a single act of renunciation by an executor completely destructive of his rights, and the representation to the testator, and the administration of his effects shall and may, without further renunciation, go, devolve and be committed, as though he had not been appointed executor.

An administrator *de bonis non* who is appointed to administer effects left unadministered by an executor, will also be an administrator *cum testamento annexo*, and his appointment will be regulated by the same principles which prevail in determining the administrator *cum testamento annexo* in other cases.

When an administrator dies, having only partially administered the goods of which administration was granted to him, the representation of the intestate does not devolve upon the executor of the administrator, should he appoint one, much less upon his administrator should he die intestate. In such case, therefore, an administration *de bonis non* is necessary.

The person who upon the death of an administrator is entitled to administration *de bonis non*, is in general one whose claim to administration stood, at the time of the intestate's death, next to that of the administrator actually appointed, as one of the next of kin of the intestate at the time of his death: (*Cardale v. Harvey*, 1 Cas. temp. Lee, 179.) But if no person having such primitive statutory right to administration be living at the time of the decease of the administrator, then the court is left to its own discretion, and will be guided by the consideration of the interest, the rule being to grant administration to the party having the interest or the principal interest in the effects, who may possibly be in no way connected with the original intestate, for instance, the executor of the first administrator: (*Savage v. Blythe*, 2 Hagg. App. 150.)

The following is the form of this kind of administration:—

In Her Majesty's Court of Probate. The Principal Registry.

Be it known, that A. B., late of _____ in the county of _____ deceased,
died on or about 18____, at _____, intestate, and that since his
death, to wit, in the month of _____ 18____, letters of administration of
all and singular his personal estate and effects were committed and
granted to C. D. [insert the relationship or character of administrator]
(which letters of administration now remain of record in _____), who,
after taking such administration upon him, intermeddled in the personal

estate and effects of the said deceased, and afterwards died, to wit, on _____, leaving part thereof unadministered, and that on the day of _____, 18____, letters of administration of the said personal estate and effects so left unadministered were granted by Her Majesty's Court of Probate to _____, he having been first sworn well and faithfully to administer the same, to pay his just debts, and exhibit a true and perfect inventory of the said personal estate and effects so left unadministered, and render a just and true account thereof whenever required by law so to do.

(Signed) E. F., Registrar.

(L. s.)

Extracted by _____
Sworn under £ _____, and that the in- } To be written in margin of
testate died on the day of 18____ } administration.

Administration durante minore etate.

Where a person appointed sole executor is under age at the death of the testator, or where the next of kin or other person entitled to the administration of the effects of an intestate is under age, a special kind of administration is granted to some fit person limited to the duration of the minority.

If there be several executors, one of whom is of full age, this kind of administration will not be granted, as the one of full age may execute the will: (*Pigot and Gascoin's case*, Brownl. 46.)

But the same rule has not been strictly followed where several of the next of kin are minors, and one of full age, and in *Cartright's case*, (1 Freem. 258), four children being next of kin to the intestate, administration was granted to the mother of three of them who were minors, in preference to the fourth who was of full age.

The choice of the person to whom administration shall be granted lies entirely with the court, but it is usual to make choice of the guardian of the minor. The spiritual court had the power of appointing a guardian to an infant under seven years of age, and a distinction was made, peculiar to these courts, between an infant and a minor, the former word denoting a child under seven years of age, the latter a person between that age and twenty-one: (Toller, 100.)

A minor may nominate his own guardian, his choice, however, being under the control of the court: (*Fawkener v. Jordan*, 2 Cas. temp. Lee. 330.)

The following form is applicable in the case of minors having to choose a guardian.

In Her Majesty's Court of Probate. The Principal Registry.

Whereas A. B. late of _____, in the county of _____ deceased,

died, on or about the day of 18 , at intestate, a widow, leaving C. D., E. F., and G. H. his natural and lawful children and only next of kin, the said C. D. being a minor of the age of twenty years only, the said E. F. being also a minor of the age of nineteen years only, and the said G. H. being an infant of the age of six years only:

Now we, the said C. D. and E. F., do hereby make choice of and elect K. L. of in the county of our lawful and maternal uncle and one of our next of kin, to be our curator or guardian, for the purpose of his obtaining letters of administration of the personal estate and effects of the said A. B. deceased to be granted to him for our use and benefit, and until one of us attain the age of twenty-one years [or for the purpose of renouncing for us, and on our behalf all our right, title, and interest to and in the letters of administration, &c. as the case may be] [add, in cases where a proctor, solicitor or attorney appears for the minors, and we hereby appoint M. N. of our proctor, solicitor, or attorney, to file or cause to be filed this our election for us in the said principal registry of Her Majesty's Court of Probate.]

In witness whereof we have hereunto set our hands and seals this day of in the year 18 .

Signed, sealed, and delivered in the presence of .

The stat. 38 Geo. 3, c. 87, s. 6, after reciting that inconveniences arise from granting probates to infants under the age of twenty-one, enacts, that "where an infant is sole executor, administration with the will annexed shall be granted to the guardian of such infant, or to such other person as the spiritual court shall think fit, until such infant shall have attained the full age of twenty-one years, at which period, and not before, probate of the will shall be granted to him."

And sect. 7 enacts, that "the person to whom such administration shall be granted, shall have the same powers vested in him as an administrator now hath by virtue of an administration granted to him *durante minore etate* of the next of kin."

The following orders relate to grants of this kind.

35. Grants of administration will continue to be made as heretofore to the guardians of minors and infants, for the use and benefit of such minors and infants, during their minority; and elections by minors of their next of kin or next friend, as the case may be, to such guardianship, will continue to be required; but proxies accepting such guardianship will in future be dispensed with.

33. In all cases where grants of administration are made for the use and benefit of minors, the administrators are required to exhibit a declaration on oath of the personal estate and effects of the deceased,

except where the effects are sworn under twenty pounds, or where the administrators are the guardians appointed by the High Court of Chancery, or are the testamentary guardians of the minors; and in all cases of persons cited, but not personally, and not appearing, the administrators are required to exhibit a similar declaration, and the sureties are required to justify.

Administration pendente lite.

The power of the ordinary to appoint an administrator *pendente lite*, in all cases of controversy in the spiritual court, whether as to the right to administration, or as to the validity of a will and the right to executorship, seems to have been long settled: (1 Williams on Exors: pt. I. bk. v. ch. 3, s. 4); and administrators appointed for such purpose seem to have had the usual powers of general administration, so far as the collecting of the effects went, but without power of distribution: (*ib.* 411.)

The new act now enacts that "pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling, or revoking any probate, or any grant of administration, the Court of Probate may appoint an administrator of the personal estate of such deceased person; and the administrator so appointed shall have all the rights and powers of a general administration, other than the right of distributing the residue of such personal estate; and every such administrator shall be subject to the immediate control of the court, and act under its direction."

This section does not appear to do more than communicate to the new Court of Probate the same power as was formerly possessed by the ordinary. The next section goes further, and enables the Court of Probate "to appoint any administrator appointed as aforesaid, or any other person to be receiver of the real estate of any deceased person pending any suit in the court touching the validity of any will of such deceased person by which his real estate may be affected."

This section, it will be observed, applies to cases of disputed wills only, and not to those of disputed administration.

Under the old state of things, a court of equity would entertain a bill for a receiver of personal as well as real property, during a litigation in the ecclesiastical court for probate or administration, and the interference of the court was quite of course, notwithstanding the power of the ecclesiastical court to commit administration *pendente lite*: (*Atkinson v. Henshaw*, 2 Ves. & Bea. 85.)

The enactments of the new act do not apparently obviate in all cases the necessity of applying to a court of equity.

Sect. 72 of the act enables the Court of Probate to direct that administrators and receivers, approved under the preceding clauses, shall receive remuneration out of the estate.

Under the old practice, administration *pendente lite* was not granted upon motion except by consent: (*Northey v. Cock*, 1 Add. 329.) In any other case it was necessary to apply to the court by petition, and to prove the necessity of the administration asked: (*ib.*)

Administration durante absentia.

This form of administration is granted in case the executor named in the will, or, where there is no will, the next of kin is absent beyond sea. In such cases before probate or letters of administration have been obtained by the parties properly entitled, administration may be granted, limited to the duration of the absence of the legitimate executor or administrator. And the right to grant administration of this kind was early asserted by the courts, on the ground of the great inconvenience which would ensue if the debts of the deceased could not be recovered during the absence of the executor beyond sea: (*Walker v. Woollaston*, 2 P. Wms. 579.)

The like principle, however, was not applied when probate had never been granted, and the executor subsequently left the kingdom. The inconveniences arising in cases of this kind led to the passing of the statute 38 Geo. 3, c. 87, entitled "An Act for the Administration of Assets in cases where the Executor, to whom Probate has been granted, is out of the Realm." The first section, after reciting that the laws now existing are not sufficient to enforce a speedy distribution of the assets of the deceased person where the executor to whom probate of the will hath been granted is out of the jurisdiction of His Majesty's courts of law and equity, enacts, that, at the expiration of twelve calendar months from the death of any testator, if the executors or executor to whom probate of the will shall have been granted, are or is then residing out of the jurisdiction of His Majesty's courts of law and equity, it shall be lawful for the ecclesiastical court, which hath granted probate of such will, upon the application of any creditor, next of kin, or legatee, grounded on the affidavit hereinafter mentioned, to grant such special administration as hereinafter is men-

tioned; which administration shall be written or printed upon paper or parchment stamped only with one five shilling stamp, and shall pay no further or other duty to His Majesty, his heirs, or successors.

The 2nd section enacts, that the party applying to the spiritual court to grant such administration, shall make an affidavit in the following words, or to the purport and effect following:—

I A. B. of do swear, that there is due and owing to me, upon bond or simple contract, or upon account unsettled, as the case may happen to be [in which latter case he shall swear to the best of his belief only], from the estate and effects of deceased, the sum of and that C. D., the only executor capable of acting, and to whom probate hath been granted, hath departed this kingdom and is now out of the jurisdiction of His Majesty's courts of law and equity, and that this deponent is desirous of exhibiting a bill in equity in His Majesty's Court of for the purpose of being paid his demand out of the assets of the said testator.

The 3rd section gives the form of the administration to be granted, which (*mutatis mutandis*) will be as follows:

Victoria, &c. To of , greeting.

Whereas it hath been alleged before by you the said that did, whilst living and of sound mind, memory, and understanding, make and duly execute his last will and testament in writing, and did therefore nominate, constitute, and appoint his executors, [or sole executor], who in the month of proved the said will by the authority of our said court, and now reside [or resides] out of this kingdom, and out of the jurisdiction of Her Majesty's courts of law and equity (as in and by an affidavit duly made and sworn to by and brought into and left in the registry of our said court [reference being thereunto had will more fully and at large appear]: and whereas the aforesaid, having duly considered the premises, did, at the petition of the said decree letters of administration of all and singular the goods, chattels, and credits of the said deceased, to be committed and granted to you the said named by or on behalf of the said a creditor, [legatee] or [one of the next of kin] of the said deceased, [as the case may be] limited for the purpose, to become and be made a party to a bill or bills to be exhibited against you in any of Her Majesty's courts of equity, and to carry the decrees or decrees of any of the said court or courts into effect, but no further or otherwise [justice so requiring]: and we being desirous that the said goods, chattels, and credits, may be well and faithfully administered, applied, and disposed of, according to law, do therefore, by these presents, grant full power and authority to you, in whose fidelity we confide, to administer, and faithfully dispose of the said goods, chattels, and credits according to the tenor and effect of the said will, limited as aforesaid, so far as such goods, chattels,

and credits of the deceased will thereto extend, and the law requires, you having been already sworn, well and faithfully to administer the same, and to make a true and perfect inventory of all and singular the said goods, chattels and credits so far as the same may come to your hands, and to exhibit the same into the registry of our said Court of Probate, on or before the next ensuing, and also to render a just and true account thereof: and we do by these presents ordain and constitute you administrator of all and singular the goods, chattels, and credits, of the said deceased, limited as aforesaid, but no further, or otherwise.

Given at London, the
of our Lord

day of

in the year

Sect. 4 enacts, that it shall be lawful for the court of equity in which such suit shall be depending, to appoint (if it shall be needful) any persons or person to collect in any outstanding debts or effects due to such estate, and to give discharges for the same, such persons or person giving security in the usual manner, duly to account for the same.

Sect. 5 enacts, that it shall be lawful for the Accountant-General of the High Court of Chancery, or for the secretary, or deputy secretary, of the Governor and Company of the Bank of England, to transfer, and for the Governor and Company of the Bank of England to suffer a transfer to be made of any stock belonging to the estate of such deceased person into the name of the Accountant-General, in trust, for such purposes as the court shall direct, in any suit in which the person to whom such administration hath been granted shall be, or may have been, a party; provided, nevertheless, that if the executors or executor capable of acting as such, shall return to and reside within the jurisdiction of any of the said courts pending such suit, such executors or executor shall be made party to such suit, and the costs incurred by granting such administration, and by proceeding in such suit against such administrator, shall be paid by such person or persons, or out of such fund as the court where such suit is depending shall direct.

This statute has been held applicable to the case of an executor resident out of the jurisdiction of the English courts, although not out of the realm: (*Hannay v. Tyn-ton*, 2 Add. 505.) It has also been held to be only applicable when a suit in Chancery exists; and administration of this kind can therefore only be obtained for the purposes of such a suit: (*In the goods of Davies*, 2 Hagg. 79.)

It was also ruled to apply only to the case of an executor, but not to an absent administrator: (*Hay v. Willoughby*, 2 Rob. 184.) The new statute extends its application to the

case where letters of administration have been granted, or the person to whom such administration shall have been granted is out of the jurisdiction of Her Majesty's courts of law and equity: (sect. 74.)

Sect. 73 of the new statute also enacts, that when a person has died, or shall die, leaving a will affecting personal estate (appointing an executor), but the executor shall, at the time of the death of such person, be resident out of the United Kingdom of Great Britain and Ireland, and it shall appear to the court to be necessary or convenient by reason of the insolvency of the estate of the deceased, or other special circumstances, to appoint some person to be the administrator of the estate of the deceased, or of any part of such personal estate, other than the person who if this act had not been passed would by law have been entitled to a grant of administration of such personal estate, it shall not be obligatory upon the court to grant administration of the personal estate of such deceased person to the person who, if this act had not passed, would have been entitled to a grant thereof, but it shall be lawful for the court in its discretion to appoint such person as the court shall think fit to be such administrator, upon his giving such security (if any) as the court shall direct, and every such administrator may be limited as the court shall think fit.

It does not appear that this section adds much to the power possessed at common law by the ecclesiastical courts to grant administration, before probate obtained, in case of the absence of the executor from the realm. In fact it only applies to the case of an executor resident out of the United Kingdom *at the time of the death* of the testator, so that if an executor were to leave England after the death of his testator, and without taking probate, this section would not be applicable. In the particular case mentioned, namely, that of an executor resident out of the realm at the time of the death of the testator, the above section extends the power of the Court of Probate to this extent, viz., that the administration may be limited as the Court shall think fit, and need not it is presumed, therefore, be strictly limited to the absence of the executor, an inconvenience which attached to the old common law administration *durante absentia*. The new statute expressly enacts moreover (sect. 75) that after any grant of administration, no person can in any way act as executor until the administration has been recalled or revoked. It has been held that in case

of an administration *durante absentia*, if any of the debtors of the deceased paid his debt to such administrator *durante absentia*, though it was after the return of the executor, yet if the debtor who paid the money had no notice of such return, it would be a good payment : (*Walker v. Woollaston*, 2 P. Wms. 579.)

It would seem to be the intention of the new statute, that whenever a limited or temporary administration is granted, a formal revocation must take place before the administration can be considered at an end, at least as against all persons dealing *bond fide* with the administrator.

Temporary and limited administration.—The grant of letters of administration may limit the power and office of the administrator in several ways, either as to the duration of the office or the amount of the property with which he has to deal, or the particular business to be performed.

Thus, where a will is known to have been in existence since the testator's death, but has been lost, administration may be granted until the will shall be found: (*In the goods of Campbell*, 2 Hagg. 555.) If an executor become lunatic, temporary administration limited to the duration of the lunacy, may be granted to his committee: (*In the goods of Phillips*, 2 Add. 336, n. (b).)

Administration will be granted for the use and benefit of a lunatic, who has not been found so by inquisition. Such administration will be granted to the next of kin of the lunatic, and sureties to double the amount of the property are required: (*Ex parte Evelyn*, 2 Myl. & K. 4.)

An administration is frequently granted limited to the performance of a particular act, as for the purpose of assigning a term of years vested in a trustee (*In the goods of Fenton*, 3 Add. 35,) or for the purpose of filing a bill in equity: (*Woolley v. Green*, 3 Phill. 315.)

The 30th Order is as follows:—

30. Limited administrations are not to be granted unless every person entitled to the general grant has consented or renounced, or has been cited and failed to appear, except under the direction of the judge.

CHAPTER V.

REVOCATION AND APPEALS.

When probate or letters of administration have once been granted, and it is sought to revoke them, the party seeking the revocation may cite the executor or administrator before the Court of Probate to bring in the probate or letters of administration, to show cause why they should not be revoked.

The following form of citation is given :—

In Her Majesty's Court of Probate.

*Victoria, by the Grace of God of the United Kingdom of Great Britain
and Ireland Queen, Defender of the Faith.*

To of in the county of .
Whereas probate of the last will and testament [with codicils] of A. B., late of deceased, was on or about the day of 18 , granted to you by our Court of Probate; and whereas C. D., one of the natural and lawful brothers and next of kin [or interested under a former will, or a party interested in distribution in the goods] of the said deceased, hath alleged that the said probate ought to be called in, revoked, and declared null and void in law; now this is to command you, that within eight days after service hereof on you inclusive of the day of such service, you do bring into and leave in the principal registry of our said court the aforesaid probate, and further to show cause (if you should think it for your interest so to do) why the same should not be revoked, and the said will [and codicils] pronounced to be null and invalid.

(Signed) E. F., Registrar.

Indorsement to be made after service.

This citation was served by G. H. on the within-named
of at on the day of 18 .
(Signed) G. H.

In case the deceased person had a fixed place of abode at the time of his death in a district, and his personal property (without deducting debts, but exclusive of any that he may be entitled to only as a trustee) is under the value of 200*l.*, and his real property (if any) under the value of 300*l.*, the County Court judge of the district in which the abode of the deceased lay has jurisdiction: (sect. 54.)

Affidavit of these facts being made by the person, or some or one of the persons applying for probate or admi-

nistration, is conclusive for the purpose of founding the jurisdiction of the County Court judge; and no decree made by the judge on the strength of such affidavit is liable to be impeached on account of the affidavit proving false. But if evidence be adduced in the course of proceedings before the judge showing the affidavit to be false, he is bound to stay proceedings, and leave the party to apply to the Court of Probate, making such order as to costs as he may think just: (sect. 57.)

As to the grounds upon which probate or letters of administration may be revoked, the recent act has made some beneficial enactments. No revocation can now take place, as formerly, on the ground of the probate or administration having been granted by a wrong jurisdiction. The statute enacts, that the affidavit, which is required as to the place of abode of the deceased, shall be conclusive to authorize the grant by the district registrar of probate or administration, and no grant made shall be liable to be revoked, though the affidavit prove to be false: (sect. 47.) About a probate or administration obtained through the Principal Registry there can be no dispute, as the act makes it optional to do so in all cases: (sect. 59.)

Where probate has been obtained in common form, the executor may, as formerly, be called upon to prove it in solemn form, his failure to do which satisfactorily will be a ground of revocation.

When a will has been proved in solemn form, revocation may be obtained by proof of fraud, or by the production of a later will: (Wentw. Off. Ex. 111, 112.)

Letters of administration may be revoked upon several grounds, as when they have been obtained by false representations to the court, or by *surprise*, as it is termed (*Harris v. Weldon*, Strange, 911); or if the administration has been properly granted, but the administrator afterwards becomes incapable to act: (*Offley v. Best*, 1 Sid. 373.) And in general where administration has been granted to a wrong person, or to one not entitled at all, it has been held that such grants although not void *ab initio* may be revoked: (*Blackborough v. Davis*, 1 Salk. 38.)

Under the old law, a grant of administration was void only when in derogation of the rights of an executor; but if in derogation of the rights of the next of kin, then it was only voidable.

The 75th section of the act, which enacts that, "after any grant of administration, no person shall have power to sue or prosecute any suit, or otherwise act as executor to the

deceased, as to the personal estate comprised in or affected by such grant of administration, until such administration shall have been recalled or revoked," establishes the principle that a formal revocation must first take place before any administration once granted can be set aside; in other words, that no grant of administration is now absolutely void, even as against an executor.

It is further enacted (sect. 77) that when any probate or administration is revoked under the act, all payments *bonâ fide* made to any executor or administrator under such probate or administration, before revocation, shall be a legal discharge to the person making the same, and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of payments which might have lawfully been made by the succeeding executor or administrator.

It was formerly the practice of the ecclesiastical courts to revoke probates or letters of administration upon which an erroneous stamp duty had been paid. This practice is forbidden by stat. 55 Geo. 3, c. 184, s. 44.

Appeal.

From decrees of a County Court judge appeal lies to the Court of Probate upon questions of law, or on the admission or rejection of evidence. The decision of the Court of Probate is final: (sect. 58.)

From decrees of the Court of Probate appeal lies to the House of Lords: (sect. 39.) The appeal may be either from an interlocutory order or a final order or decree.

The leave of the Court of Probate to appeal must be first obtained. On the hearing of an appeal from a final decree all interlocutory orders complained of shall be considered as under appeal as well as the decree: (*ib.*)

The following rules have reference to the practice of appeals:—

49. No petition of appeal shall be lodged against any sentence of the Court of Probate, unless within a month of the delivery of the sentence appealed from, or within such other time as the judge shall direct, and unless notice of such appeal has been given to the opposite party in the cause, and filed in the registry.

50. Parties may proceed to carry into effect the decision of the Court of Probate, notwithstanding any such notice of appeal, unless the judge shall otherwise order.

51. After notice of appeal has been given, the judge of the Court of Probate may order the execution of his decree to be suspended upon such terms as he sees fit.

CHAPTER VI.

STAMPS ON PROBATE AND LETTERS OF ADMINISTRATION.

The stamp duties payable on probates and letters of administration remain as they were before the act: (sect. 92.) These duties imposed by stat. 55 Geo. 3, c. 184, are as follows:

On probate of a will and letters of administration with a will annexed, to be granted in England;

Where the estate and effects for or in respect of which such probate, or letters of administration, respectively shall be granted, *exclusive of what the deceased shall have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially*, shall be

		£	s.	d.
above the value of	20 <i>l.</i> and under the value of	100 <i>l.</i>	0	10 0
of the value of	100 <i>l.</i> and under the value of	200 <i>l.</i>	2	0 0
of the value of	200 <i>l.</i> and under the value of	300 <i>l.</i>	5	0 0
of the value of	300 <i>l.</i> and under the value of	450 <i>l.</i>	8	0 0
of the value of	450 <i>l.</i> and under the value of	600 <i>l.</i>	11	0 0
of the value of	600 <i>l.</i> and under the value of	800 <i>l.</i>	15	0 0
of the value of	800 <i>l.</i> and under the value of	1,000 <i>l.</i>	22	0 0
of the value of	1,000 <i>l.</i> and under the value of	1,500 <i>l.</i>	30	0 0
of the value of	1,500 <i>l.</i> and under the value of	2,000 <i>l.</i>	40	0 0
of the value of	2,000 <i>l.</i> and under the value of	3,000 <i>l.</i>	50	0 0
of the value of	3,000 <i>l.</i> and under the value of	4,000 <i>l.</i>	60	0 0
of the value of	4,000 <i>l.</i> and under the value of	5,000 <i>l.</i>	80	0 0
of the value of	5,000 <i>l.</i> and under the value of	6,000 <i>l.</i>	100	0 0
of the value of	6,000 <i>l.</i> and under the value of	7,000 <i>l.</i>	120	0 0
of the value of	7,000 <i>l.</i> and under the value of	8,000 <i>l.</i>	140	0 0
of the value of	8,000 <i>l.</i> and under the value of	9,000 <i>l.</i>	160	0 0
of the value of	9,000 <i>l.</i> and under the value of	10,000 <i>l.</i>	180	0 0
of the value of	10,000 <i>l.</i> and under the value of	12,000 <i>l.</i>	200	0 0
of the value of	12,000 <i>l.</i> and under the value of	14,000 <i>l.</i>	220	0 0
of the value of	14,000 <i>l.</i> and under the value of	16,000 <i>l.</i>	250	0 0
of the value of	16,000 <i>l.</i> and under the value of	18,000 <i>l.</i>	280	0 0
of the value of	18,000 <i>l.</i> and under the value of	20,000 <i>l.</i>	310	0 0
of the value of	20,000 <i>l.</i> and under the value of	25,000 <i>l.</i>	350	0 0
of the value of	25,000 <i>l.</i> and under the value of	30,000 <i>l.</i>	400	0 0
of the value of	30,000 <i>l.</i> and under the value of	35,000 <i>l.</i>	450	0 0
of the value of	35,000 <i>l.</i> and under the value of	40,000 <i>l.</i>	525	0 0
of the value of	40,000 <i>l.</i> and under the value of	45,000 <i>l.</i>	600	0 0
of the value of	45,000 <i>l.</i> and under the value of	50,000 <i>l.</i>	675	0 0
of the value of	50,000 <i>l.</i> and under the value of	60,000 <i>l.</i>	750	0 0

	£	s.	d.
of the value of 60,000 <i>l.</i> and under the value of 70,000 <i>l.</i>	900	0	0
of the value of 70,000 <i>l.</i> and under the value of 80,000 <i>l.</i>	1,050	0	0
of the value of 80,000 <i>l.</i> and under the value of 90,000 <i>l.</i>	1,200	0	0
of the value of 90,000 <i>l.</i> and under the value of 100,000 <i>l.</i>	1,350	0	0
of the value of 100,000 <i>l.</i> and under the value of 120,000 <i>l.</i>	1,500	0	0
of the value of 120,000 <i>l.</i> and under the value of 140,000 <i>l.</i>	1,800	0	0
of the value of 140,000 <i>l.</i> and under the value of 160,000 <i>l.</i>	2,100	0	0
of the value of 160,000 <i>l.</i> and under the value of 180,000 <i>l.</i>	2,400	0	0
of the value of 180,000 <i>l.</i> and under the value of 200,000 <i>l.</i>	2,700	0	0
of the value of 200,000 <i>l.</i> and under the value of 250,000 <i>l.</i>	3,000	0	0
of the value of 250,000 <i>l.</i> and under the value of 300,000 <i>l.</i>	3,750	0	0
of the value of 300,000 <i>l.</i> and under the value of 350,000 <i>l.</i>	4,500	0	0
of the value of 350,000 <i>l.</i> and under the value of 400,000 <i>l.</i>	5,250	0	0
of the value of 400,000 <i>l.</i> and under the value of 500,000 <i>l.</i>	6,000	0	0
of the value of 500,000 <i>l.</i> and under the value of 600,000 <i>l.</i>	7,500	0	0
of the value of 600,000 <i>l.</i> and under the value of 700,000 <i>l.</i>	9,000	0	0
of the value of 700,000 <i>l.</i> and under the value of 800,000 <i>l.</i>	10,500	0	0
of the value of 800,000 <i>l.</i> and under the value of 900,000 <i>l.</i>	12,000	0	0
of the value of 900,000 <i>l.</i> & under the value of 1,000,000 <i>l.</i>	13,500	0	0
of the value of 1,000,000 <i>l.</i> and upwards	...	...	15,000 0 0

On letters of administration, without a will annexed, to be granted in England :

Where the estate and effects for or in respect of which such letters of administration shall be granted, *exclusive of what the deceased shall have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially*, shall be

	£	s.	d.
above the value of 20 <i>l.</i> and under the value of 50 <i>l.</i>	0	10	0
of the value of 50 <i>l.</i> and under the value of 100 <i>l.</i>	1	0	0
of the value of 100 <i>l.</i> and under the value of 200 <i>l.</i>	3	0	0
of the value of 200 <i>l.</i> and under the value of 300 <i>l.</i>	8	0	0
of the value of 300 <i>l.</i> and under the value of 450 <i>l.</i>	11	0	0
of the value of 450 <i>l.</i> and under the value of 600 <i>l.</i>	15	0	0
of the value of 600 <i>l.</i> and under the value of 800 <i>l.</i>	22	0	0
of the value of 800 <i>l.</i> and under the value of 1,000 <i>l.</i>	30	0	0
of the value of 1,000 <i>l.</i> and under the value of 1,500 <i>l.</i>	45	0	0
of the value of 1,500 <i>l.</i> and under the value of 2,000 <i>l.</i>	60	0	0
of the value of 2,000 <i>l.</i> and under the value of 3,000 <i>l.</i>	75	0	0
of the value of 3,000 <i>l.</i> and under the value of 4,000 <i>l.</i>	90	0	0
of the value of 4,000 <i>l.</i> and under the value of 5,000 <i>l.</i>	120	0	0
of the value of 5,000 <i>l.</i> and under the value of 6,000 <i>l.</i>	150	0	0
of the value of 6,000 <i>l.</i> and under the value of 7,000 <i>l.</i>	180	0	0
of the value of 7,000 <i>l.</i> and under the value of 8,000 <i>l.</i>	210	0	0
of the value of 8,000 <i>l.</i> and under the value of 9,000 <i>l.</i>	240	0	0
of the value of 9,000 <i>l.</i> and under the value of 10,000 <i>l.</i>	270	0	0
of the value of 10,000 <i>l.</i> and under the value of 12,000 <i>l.</i>	300	0	0
of the value of 12,000 <i>l.</i> and under the value of 14,000 <i>l.</i>	330	0	0

	£	s.	d.
of the value of 14,000 <i>l.</i> and under the value of 16,000 <i>l.</i>	375	0	0
of the value of 16,000 <i>l.</i> and under the value of 18,000 <i>l.</i>	420	0	0
of the value of 18,000 <i>l.</i> and under the value of 20,000 <i>l.</i>	465	0	0
of the value of 20,000 <i>l.</i> and under the value of 25,000 <i>l.</i>	525	0	0
of the value of 25,000 <i>l.</i> and under the value of 30,000 <i>l.</i>	600	0	0
of the value of 30,000 <i>l.</i> and under the value of 35,000 <i>l.</i>	675	0	0
of the value of 35,000 <i>l.</i> and under the value of 40,000 <i>l.</i>	785	0	0
of the value of 40,000 <i>l.</i> and under the value of 45,000 <i>l.</i>	900	0	0
of the value of 45,000 <i>l.</i> and under the value of 50,000 <i>l.</i>	1,010	0	0
of the value of 50,000 <i>l.</i> and under the value of 60,000 <i>l.</i>	1,125	0	0
of the value of 60,000 <i>l.</i> and under the value of 70,000 <i>l.</i>	1,350	0	0
of the value of 70,000 <i>l.</i> and under the value of 80,000 <i>l.</i>	1,575	0	0
of the value of 80,000 <i>l.</i> and under the value of 90,000 <i>l.</i>	1,800	0	0
of the value of 90,000 <i>l.</i> and under the value of 100,000 <i>l.</i>	2,025	0	0
of the value of 100,000 <i>l.</i> and under the value of 120,000 <i>l.</i>	2,250	0	0
of the value of 120,000 <i>l.</i> and under the value of 140,000 <i>l.</i>	2,750	0	0
of the value of 140,000 <i>l.</i> and under the value of 160,000 <i>l.</i>	3,100	0	0
of the value of 160,000 <i>l.</i> and under the value of 180,000 <i>l.</i>	3,600	0	0
of the value of 180,000 <i>l.</i> and under the value of 200,000 <i>l.</i>	4,000	0	0
of the value of 200,000 <i>l.</i> and under the value of 250,000 <i>l.</i>	4,500	0	0
of the value of 250,000 <i>l.</i> and under the value of 300,000 <i>l.</i>	5,625	0	0
of the value of 300,000 <i>l.</i> and under the value of 350,000 <i>l.</i>	6,750	0	0
of the value of 350,000 <i>l.</i> and under the value of 400,000 <i>l.</i>	7,875	0	0
of the value of 400,000 <i>l.</i> and under the value of 500,000 <i>l.</i>	9,000	0	0
of the value of 500,000 <i>l.</i> and under the value of 600,000 <i>l.</i>	11,250	0	0
of the value of 600,000 <i>l.</i> and under the value of 700,000 <i>l.</i>	13,500	0	0
of the value of 700,000 <i>l.</i> and under the value of 800,000 <i>l.</i>	15,750	0	0
of the value of 800,000 <i>l.</i> and under the value of 900,000 <i>l.</i>	18,000	0	0
of the value of 900,000 <i>l.</i> & under the value of 1,000,000 <i>l.</i>	20,250	0	0
of the value of 1,000,000 <i>l.</i> and upwards	22,500	0	0

Probate of the will, or letters of administration of the effects of any common seaman, marine, or soldier who shall be slain or die in the service of Her Majesty, her heirs or successors, are exempt from all stamp duties.

Sect. 37 enacts, that if any person shall take possession of, and in any manner administer, any part of the personal estate and effects of any person deceased, without obtaining probate of the will or letters of administration of the estate and effects of the deceased within six calendar months after his or her decease, or within two calendar months after the termination of any suit or dispute respecting the will or the right to letters of administration, if there shall be any such, which shall not be ended within four calendar months after the death of the deceased, every person so offending shall forfeit the sum of one hundred pounds, and also a further sum at and after the rate of ten pounds per centum on the amount of the stamp duty payable on the probate of the will or letters of administration of the estate and effects of the deceased.

Sect. 38 enacts, that no ecclesiastical court or person shall grant

probate of the will or letters of administration of the estate and effects of any person deceased, without first requiring and receiving from the person or persons applying for the probate or letters of administration, or from some other competent person or persons, an affidavit, or solemn affirmation in the case of Quakers, that the estate and effects of the deceased for or in respect of which the probate or letters of administration is or are to be granted, exclusive of what the deceased shall have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially, but including the leasehold estates for years of the deceased, whether absolute or determinable on lives, if any, and without deducting anything on account of the debts due and owing from the deceased, are under the value of a certain sum to be therein specified, to the best of the deponent's or affirmant's knowledge, information, and belief, in order that the proper and full stamp duty may be paid on such probate or letters of administration; which affidavit or affirmation shall be made before the surrogate or other person who shall administer the usual oath for the due administration of the estate and effects of the deceased.

Sect. 39 exempts the affidavit or affirmation from stamp duty.

Sect. 40 provides, that where any person on applying for the probate of a will or letters of administration shall have estimated the estate and effects of the deceased to be of greater value than the same shall have afterwards proved to be, and shall in consequence have paid too high a stamp duty thereon, if such person shall produce the probate or letters of administration to the said commissioners of stamps within six calendar months after the true value of the estate and effects shall have been ascertained, and it shall be discovered that too high a duty was first paid on the probate or letters of administration, and shall deliver to them a particular inventory and account, and valuation of the estate and effects of the deceased, verified by an affidavit, or solemn affirmation in the case of Quakers; and if it should thereupon satisfactorily appear to the said commissioners that a greater stamp duty was paid on the probate or letters of administration than the law required, it shall be lawful for the said commissioners to cancel and expunge the stamp on the probate or letters of administration, and to substitute another stamp for denoting the duty which ought to have been paid thereon, and to make an allowance for the difference between them, as in the cases of spoiled stamps, or, if the difference be considerable, to repay the same in money, at the discretion of the said commissioners.

Sect. 41 enacts, that where any person, on applying for the probate of a will or letters of administration, shall have estimated the estate and effects of the deceased to be of less value than the same shall have afterwards proved to be, and shall in consequence have paid too little stamp duty thereon, it shall be lawful for the said commissioners of stamps, on delivery to them of an affidavit or solemn affirmation of the value of the estate and effects of the deceased, to cause the probate or letters of administration to be duly stamped on payment of the full duty which ought to have been originally paid thereon in respect of

such value, and of the further sum or penalty payable by law for stamping deeds after the execution thereof, without any deduction or allowance of the stamp duty originally paid on such probate or letters of administration: provided always, that if the application shall be made within six calendar months after the true value of the estate and effects shall be ascertained, and it shall be discovered that too little duty was at first paid on the probate or letters of administration, and if it shall appear by affidavit or solemn affirmation to the satisfaction of the said commissioners that such duty was paid in consequence of any mistake or misapprehension, or of its not being known at the time that some particular part of the estate and effects belonged to the deceased, and without the intention of fraud, or to delay the payment of the full and proper duty, then it shall be lawful for the said commissioners to remit the before-mentioned penalty, and to cause the probate or letters of administration to be duly stamped, on payment only of the sum which shall be wanting to make up the duty which ought to have been at first paid thereon.

Sect. 42 provides, that in cases of letters of administration on which too little stamp duty shall have been paid at first, the said commissioners of stamps shall not cause the same to be duly stamped in the manner aforesaid, until the administrator shall have given such security to the ecclesiastical court or ordinary by whom the letters of administration shall have been granted as ought by law to have been given on the granting thereof, in case the full value of the estate and effects of the deceased had been then ascertained, and also that the said commissioners of stamps shall yearly or oftener transmit an account of the probates and letters of administration upon which the stamps shall have been rectified in pursuance of this act to the several ecclesiastical courts by which the same shall have been granted, together with the value of the estate and effects of the deceased upon which such rectification shall have proceeded.

Sect. 43 enacts, that where too little duty shall have been paid on any probate or letters of administration, in consequence of any mistake or misapprehension, or of its not being known at the time that some particular part of the estate and effects belonged to the deceased, if any executor or administrator acting under such probate or letters of administration shall not, within six calendar months after the passing of this act, or after the discovery of the mistake or misapprehension, or of any estate or effects not known at the time to have belonged to the deceased, apply to the said commissioners of stamps, and pay what shall be wanting to make up the duty which ought to have been paid at first on such probate or letters of administration, he or she shall forfeit the sum of one hundred pounds, and also a further sum at and after the rate of ten pounds per centum on the amount of the sum wanting to make up the proper duty.

Sect. 45 runs thus: Whereas it has happened in the case of letters of administration on which the proper stamp duty hath not been paid at first, that certain debts, chattels real or other effects due or belonging to the deceased have been found to be of such great value that the administrator hath not been possessed of money sufficient, either of his

own or of the deceased, to pay the requisite stamp duty, in order to render such letters of administration available for the recovery thereof by law: and whereas the like may occur again, and it may also happen that executors or persons entitled to take out letters of administration may, before obtaining probate of the will or letters of administration of the estate and effects of the deceased, find some considerable part or parts of the estate and effects of the deceased so circumstanced as not to be immediately got possession of, and may not have money sufficient, either of their own or of the deceased, to pay the stamp duty on the probate or letters of administration which it shall be necessary to obtain: be it therefore enacted, that it shall be lawful for the said commissioners of stamps, on satisfactory proof of the facts by affidavit or solemn affirmation in any such case as aforesaid which may appear to them to require relief, to cause the probate or letters of administration to be duly stamped for denoting the duty payable or which ought originally to have been paid thereon, and to give credit for the duty, either upon payment of the before-mentioned penalty, or without, in cases of probates or letters of administration already obtained, and upon which too little duty shall have been paid, and either with or without allowance of the stamp duty already paid thereon, as the case may require, under the provisions of this act; provided in all such cases of credit that security be first given by the executors or administrators, together with two or more sufficient sureties to be approved of by the said commissioners, by a bond to His Majesty, his heirs or successors, in double the amount of the duty, for the due and full payment of the sum for which credit shall be given, within six calendar months or any less period, and of the interest for the same at the rate of ten pounds per centum per annum from the expiration of such period until payment thereof, in case of any default of payment at the time appointed; and such probate or letters of administration, being duly stamped in the manner aforesaid, shall be as valid and available as if the proper duty had been at first paid thereon and the same had been stamped accordingly.

Sect. 46 provides that the commissioners may extend the credit, if necessary.

Sect. 47 provides that the probate or letters of administration so to be stamped on credit as aforesaid shall be deposited with the said commissioners of stamps, and shall not be delivered up to the executor or administrator until payment of the duty, together with such interest as aforesaid, if any shall become due; but the same shall nevertheless be produced in evidence by some officer of the commissioners of stamps at the expense of the executor or administrator, as occasion shall require.

Sect. 48.—The duty for which credit shall be given as aforesaid shall be a debt to his majesty, his heirs or successors, from the personal estate of the deceased, and shall be paid in preference to and before any other debt whatsoever due from the same estate; and if any executor or administrator of the estate of the deceased shall pay any other debt in preference thereto, he or she shall not only be charged with and be liable to pay the duty out of his or her own estate, but shall also forfeit the sum of five hundred pounds.

Sect. 49 enacts that if before payment of the duty for which credit shall be given in any such case as aforesaid it shall become necessary to take out letters of administration *de bonis non* of the deceased, it shall also be lawful for the said commissioners to cause such letters of administration *de bonis non* to be duly stamped with the particular stamp provided to be used on letters of administration of that kind for denoting the payment of the duty in respect of the effects of the deceased on some prior probate or letters of administration of the same effects in such and the same manner as if the duty had been actually paid, upon having the letters of administration *de bonis non* deposited with the said commissioners, and upon having such further security for the payment of the duty as they shall think expedient; and such letters of administration shall be as valid and available as if the duty for which credit shall be given had been paid.

Sect. 51 provides, that where it shall be proved by oath or proper vouchers to the satisfaction of the said commissioners of stamps that an executor or administrator hath paid debts due and owing from the deceased, and payable by law out of his or her personal or moveable estate, to such an amount as being deducted from the amount or value of the estate and effects of the deceased for or in respect of which a probate or letters of administration shall have been granted, shall reduce the same to a sum which if it had been the whole gross amount or value of such estate and effects would have occasioned a less stamp duty to be paid on such probate or letters of administration, than shall have been actually paid thereon under and by virtue of this act, it shall be lawful for the said commissioners to return the difference, provided the same shall be claimed within three years after the date of such probate or letters of administration or confirmation, or the recording of such confirmation as aforesaid; but where by reason of any proceeding at law or in equity the debts due from the deceased shall not have been ascertained and paid, or the effects of the deceased shall not have been recovered and made available, and in consequence thereof the executor or administrator shall be prevented from claiming such return of duty as aforesaid within the said term of three years, it shall be lawful for the commissioners of the Treasury ⁽¹⁾ to allow such further time for making the claim as may appear to them to be reasonable under the circumstances of the case.

The stat. 48 Geo. 3, c. 149, s. 35, validates probate and letters of administration so far as relates to trust property, notwithstanding that the value of such trust property be not included in the valuation upon which stamp duty was paid.

The stat. 9 Geo. 4, c. 92, s. 40, provides that when the whole estate and effects of a depositor in a savings bank do

⁽¹⁾ Stat. 5 & 6 Vict. c. 79, s. 23, authorizes the commissioners of stamps and taxes to allow further time in the case mentioned.

not exceed the value of 50*l.*, no probate or administration stamp shall be necessary ; nor, by sect. 41, is any stamp duty chargeable upon the administration bond or any affidavit given or made in such a case. And in case a depositor dies leaving a sum of money in the savings bank not exceeding 50*l.*, and without leaving a will and no administrator appear, the trustees are permitted to pay and divide the effects of the deceased intestate, according to the Statute of Distributions.

In calculating the value of the deceased's effects, the executor or administrator is not bound to include debts which are bad or doubtful. He is to exercise a *bonâ fidè* judgment as to the character of a debt : (*Moses v. Crafter*, 4 Car. & P. 524.)

The stamp must cover the value of the assets at the time of the grant of administration, not at the time of the deceased's death : (*Doe d. Richards v. Evans*, 10 Q. B. 478.)

It has been decided that duty is not payable in respect of property in a foreign country belonging to a testator dying in this country, although the property be brought into and administered in this country. The probate is granted only in respect of such assets as are within the jurisdiction of the court : (*Attorney-General v. Dimond*, 1 Cr. & Jer. 536.) The same was decided in the House of Lords, after much discussion : (*Attorney-General v. Hope*, 1 Cr. M. & R. 530.)

But duty is payable in respect of foreign bonds, held by a testator dying in this country, and which come into the hands of his executors in this country, such bonds being marketable securities within this kingdom, and transferable by delivery only, and it not being necessary to do any act abroad to render the transfer of them valid : (*Attorney-General v. Bouwens*, 4 Mees. & W. 171.)

No duty is payable in respect of realty which has been devised in trust for sale, and in equity impressed with the character of personalty. The Crown, it has been held, cannot take advantage of the equitable view which treats real property as personalty : (*Matson v. Swift*, 8 Beav. 368.)

Duty is not payable in respect of property over which the testator had a general and absolute power of appointment, which power he exercises by his will. Such property the executor, *quâ* executor, can have no title to, nor could the ordinary, under the old law, interfere with it. It does not therefore come under the description of property in respect of which probate is granted : (*Platt v. Routh*, 6 Mees. & W. 756.)

CHAPTER VII.

WILLS OF SOLDIERS AND SEAMEN, AND ADMINISTRATION
OF THEIR EFFECTS.

In general the rules which apply to the wills of other classes of the community apply to those of soldiers and seamen. But with regard to "soldiers being in *actual military service* and mariners or seamen *being at sea*," the privilege of making a will without the usual formalities of attestation or even a nuncupative or verbal will has been reserved to them; first, by the Statute of Frauds, which, while laying nuncupative or verbal wills in general under very rigid restrictions, made an exception in the case of soldiers in *actual military service* and seamen *at sea*; and, secondly, by the late Wills Act, 1 Vict. c. 26, which, while it abolished nuncupative wills and required all written wills to be executed and attested with certain formalities, still continued the exception made by the Statute of Frauds, and enacted "that any soldier being in actual service or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of the act."

It results from this that the most informal will made strictly under the conditions mentioned may be admitted to probate.

A soldier quartered in barracks does not come within the description of one "in actual service:" (*White v. Repton*, 8 Curt. 818.)

A seaman who dies casually on shore, the ship being on a voyage, has been held to be "at sea" (*In the goods of Lay*, 2 Curt. 375), and merchant seamen are within the act as well as those in Her Majesty's service: (*Morrell v. Morrell*, 1 Hagg. 51.)

With regard to the wages and prize money of seamen in the navy, some special provisions are made by several acts. The stat. 11 Geo. 4, c. 20, enacts that the wages, prize money, or other moneys payable in respect of service

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in the navy, shall not pass by the will of any petty officer or seaman, non-commissioned officer of marines or marine, made before his entry into the service, nor made, executed, and attested, in the manner described in sect. 47 of the act.

The 51st section enacts that before any seaman's will relating to his pay shall be attempted to be put in force it must be sent to the inspector of seamen's wills, addressed to the secretary of the Admiralty (2 Will. 4, c. 40, s. 337) in order to be examined, and if upon examination any ground of doubting its authenticity is found, the inspector of seamen's wills will give notice thereof to the executor, and a caveat is to be entered against the will, to prevent any money being paid under it until its authenticity has been duly proved. If the examination prove satisfactory, the inspector or his assistant signs his name to the will and stamps it.

The 65th section contains the following directions and enactments concerning obtaining probate of such wills :

When any petty officer or seaman, non-commissioned officer of marines, or marine, who shall have belonged to any ship of his Majesty, shall have died, leaving a will, no wages, prize money, or other allowance of money shall be paid over to or recovered by his executor or executors except upon the probate of the will, to be obtained in the following manner: *videlicet*, after such will shall have been so transmitted, registered, and approved as hereinbefore directed, the inspector shall cause to be issued to the person named therein as executor a cheque in lieu thereof, containing directions to return the same, with his or her signature thereto, upon the testator's death, to the treasurer of his Majesty's navy, which cheque shall be in the form heretofore used in such cases, or in such other form as the treasurer of the navy shall deem most expedient and conducive to the purposes of this act, and shall have the requisite certificates in blank subscribed thereto, to be filled up as hereinafter mentioned; and in the event of the testator's death, the minister or curate of the parish in which the party named as executor shall then reside shall, upon the application of the executor examine him, and such two inhabitant householders of the parish as may be disposed to certify their personal knowledge of the holder of the cheque, touching his claim, and that they are satisfied of his being the person therein described as executor; and the said executor shall subscribe his name to the application, and the two householders their names to the certificate for that purpose subjoined to the cheque (the blanks therein being first filled up agreeable to truth), in the presence of the minister or curate, for which respective purposes the said executor and householders shall attend at such time and place as shall be appointed by the minister or curate, who being, upon examination of the several parties, satisfied with their answers, and that the person holding the

cheque is the executor therein named, and that the two persons certifying as before required are inhabitant householders of the parish, and having seen the said parties sign the application and certificate respectively (which he is hereby required to do), shall add thereto a description of the height, complexion, colour of eyes and hair, age, and any particular marks about the person of the party claiming as executor, and, after the several blanks shall have been filled up agreeable to truth, shall certify to the several particulars by subscribing his signature thereto; and the said executor shall, before signing the application, pay to the said minister or curate a fee of two shillings and sixpence for his trouble on the occasion; and the said application and certificates being in all things completed according to the directions therein and hereby given, the same shall be transmitted by the said minister or curate by the general post, addressed to the treasurer of the navy, London; and the said original will having been passed in the manner directed by this act, the inspector shall note thereon the amount of the wages due to the deceased, as calculated on the search to be obtained from the navy office, and shall then forward such will to a proctor, in order to his obtaining probate thereof; and in case the executor shall not reside within the bills of mortality, the inspector shall also forward to such proctor a letter addressed to the minister, in the usual or other requisite form for the purpose of its being transmitted to him with the commission for administering the necessary oath to the party as executor; and such proctor, having received the will and the said letter of the inspector (in case such letter shall be necessary), shall immediately sue out the previous commission or requisition, or take such other steps as may be necessary towards enabling the executor to obtain probate, and shall inclose in the said letter a copy of the will and the commission or requisition with instructions for executing the same, and forward the same to the minister by the general post, agreeably to the address put thereon by the inspector.

In case of intestacy the 66th section lays down the following rules for obtaining administration:

That when any petty officer or seaman, non-commissioned officer of marines, or marine, shall die intestate, leaving any wages, prize money, or other allowances of money of any kind due to him in respect of services in his Majesty's navy, the same shall not be paid to his representatives, except upon letters of administration to be obtained in the following manner: *videlicet*, the person claiming administration shall send a letter to the inspector stating his place of abode, the parish in which the same is situate, his degree of relationship to the deceased, the names of the deceased and of the ship or ships to which he belonged, that he has been informed of the intestate's death, and requesting the inspector to give such directions as may enable him to procure letters of administration to the deceased's effects, or to the like effect, upon receipt whereof the inspector shall send by post, under cover to the minister of the parish wherein the claimant shall reside, a petition in the form heretofore in such cases used, or in such other form as the treasurer of

the navy shall deem most expedient and conducive to the purposes of this act, together with the requisite certificates in blank, to be filled up as hereafter mentioned, and a letter pointing out the steps to be taken thereon as hereinafter in that behalf contained, and shall also send to the claimant a letter advising him of the forwarding of the said petition or paper as aforesaid, and pointing out the measures to be taken by him for substantiating his claim; and upon receipt of the said petition the minister, officiating minister, or curate shall, on the application of the claimant, examine him, and also such two inhabitant householders of the parish as may be disposed to certify their personal knowledge of him, and their belief of his right to administer to the effects of the intestate, according to the degree of relationship set forth at the head of the petition; and the minister or curate being, upon due examination of the claimant and the said two householders, satisfied of the truth of their answers, and having seen the claimant sign the application, and the two householders sign the certificate, (which the minister is required to,) shall add thereto a description of the height, complexion, colour of eyes and hair, age, and any particular marks about the person of the claimant, and after the blanks in the said petition, certificates, and description for those several purposes shall have been filled up agreeable to truth, shall certify to the several particulars by subscribing his signature thereto, for which respective purposes the said claimant and the householders shall attend at such time and place as the minister or curate shall appoint; and the claimant shall, before signing the petition, pay to the minister or curate a fee of two shillings and sixpence for his trouble on the occasion; and the said paper being in all things completed according to the directions therein and hereby given, the minister shall return the same by the general post addressed to the treasurer of the navy, London; and upon the receipt thereof at the navy pay office, the inspector shall examine the same, and, being satisfied of the claim, he shall transmit to a proctor a certificate thereof (in the form heretofore used, or in such other form as the treasurer of the navy shall deem expedient); and in case the claimant shall not reside within the bills of mortality, the inspector shall at the same time inclose and send to the said proctor a letter addressed to the minister and churchwardens or elders (as the case may be) of the parish within which the claimant then shall reside, signifying the transmission of a commission (which the proctor is to obtain) for swearing the claimant as administrator, with the necessary instructions for executing the same; and the proctor shall, upon receipt thereof, take the requisite steps towards enabling the claimant to obtain letters of administration, and shall, in the inspector's letter to the minister, inclose the commission or other necessary instrument, with instructions for executing the same, and shall forward such letter and inclosures by the general post, agreeably to the address put hereon by the said inspector.

Section 57 enacts:—

That in case the minister or curate shall reject any petition for

want of satisfactory proof of the claim, he shall state his reasons for such rejection on the said petition, and forthwith return the same to the treasurer of the navy as aforesaid; and in case no application shall be made to the minister or curate by the claimant, or no effectual steps shall be taken by him to complete the petition and the certificates within the space of two calendar months from the date of the inspector's letter accompanying such petition, the minister or curate shall, at the expiration of that time, return the petition to the treasurer of the navy as aforesaid, with his reason for doing so noted thereon.

Section 58 enacts :—

And be it enacted, that every minister to whom any such letter with a commission or requisition for swearing any executor or administrator, shall be transmitted, shall, immediately upon the receipt thereof, take the necessary steps for procuring the execution of the same, and shall transmit the same, when executed, directed to the treasurer of his Majesty's navy, London; and if the executor or administrator shall reside at a distance from the place where the wages or other allowances of money are payable, he shall specify the name and residence of the nearest or most convenient collector of customs or of excise; and upon receipt of the said commission at the navy pay office, the same shall be forwarded to the proctor, who, in pursuance thereof, shall forthwith procure the requisite probate or letters of administration, and when obtained transmit the same to the inspector at the navy pay office.

Section 59 enacts :—

That when any probate or letters of administration shall have been so obtained, the proctor employed therein shall immediately send the same to the treasurer of the navy, with a copy of the will (in the case of probate), and an account of his charges for the same; and upon receipt thereof the inspector shall issue a check, containing the heads of such probate or letters of administration, and shall note thereon the amount of the proctor's charges and the address of the claimant, which check shall be in the form heretofore used in the navy pay office, or in such other form as the treasurer of the navy shall deem most expedient for the purpose; and so soon as the wages and prize money due to the deceased shall have been calculated in the proper departments, the amount shall be noted on the check, and, after abating the proctor's charges, the balance shall be paid to the party personally, or by means of a remittance bill, in the manner and under similar regulations as are hereinbefore provided with respect to other remittances of wages, and the check shall then be delivered to the party to stand instead of probate or letters of administration, to enable him to receive whatever other sums may become payable to the deceased's estate.

Section 60 enacts :—

That if any proctor, registrar, or other officer of any ecclesiastical court shall deliver or cause to be delivered any letters of administration, probate of will, or letters of administration with will annexed, to any

other person than the treasurer of the navy or the said inspector, in the manner directed by this act, such proctor or other officer so offending shall for every such offence forfeit the sum of one hundred pounds; and if any agent or agents for prizes shall pay any prize money due to a petty officer or seaman, non-commissioned officer of marines, or marine, under any authority whatever, other than the inspector's check directed by this act, such payment shall be null and void, and the agent or agents so paying the same shall forfeit for every and each such offence a sum equal to the amount of the prize money paid.

The 61st section enacts :—

That no registrar, proctor, or other officer of any ecclesiastical court shall, under any pretence, take or receive any more for the stamp, seal, parchment, writing, fees, and trouble attending the suing forth the probate of any will or any letters of administration to the effects of any warrant or petty officer or seaman, non-commissioned officer of marines or marine, whereby any person may be enabled to obtain any wages, prize money, or other allowance of money of any kind in respect of services in the navy, than the several sums specified in the schedule hereunto annexed: provided nevertheless, that if any increase or diminution shall take place in the stamp duties payable on any instrument connected therewith, then the charges shall be increased or diminished to the extent of the change in such duties, but no further: provided always, that in cases of extraordinary trouble or expense, the proctor shall be allowed to make additional charges in proportion thereto, and if the same shall appear reasonable to the inspector he may allow the same, but otherwise the same shall be submitted to the treasurer of the navy, and if he shall disapprove thereof, the same shall be taxed by the proper officer of the court, without fee or reward, unless the charges shall have arisen in consequence of any litigation or suit, in which case a fee of three shillings shall be allowed to the officer for taxation.

The schedule of fees referred to was by the act 2 Will. 4, c. 40, somewhat modified, and the fees now in force are as in the following table :

TABLE OF FEES

TO BE TAKEN

For PROBATES of WILLS, LETTERS of ADMINISTRATION, and LETTERS of ADMINISTRATION with WILL ANNEXED, of Warrant and Petty Officers, and Non-commissioned Officers of Marines, and also of Common Seamen and Marines in pursuance of 2 Will. 4, c. 40.

PROBATES.

	Under what Sum the Effects sworn.	Where the Deceased was a Warrant or Petty Officer in the Navy, or a Non-commissioned Officer of Marines.		Where the Deceased was a Common Seaman or Marine.	
		If the Executor be a Wife, Child, Parent, Brother, or Sister of the Deceased.	If the Executor be more remotely related or a Stranger in Blood to him.	If the Executor be a Wife, Child, Parent, Brother, or Sister of the Deceased.	If the Executor be more remotely related, or a Stranger in Blood to him.
	£	£ s. d.	£ s. d.	£ s. d.	£ s. d.
If the Executor sworn in London	20	0 7 0	0 16 6	0 7 0	0 16 6
	50	1 0 6	1 10 6	0 10 0	1 1 0
	100	1 8 6	1 15 6	0 19 0	1 6 0
If the Executor sworn in the Country by Commission	20	0 19 0	1 12 0	0 19 0	1 12 0
	50	1 17 0	2 12 6	1 7 6	2 3 0
	100	2 8 0	2 17 6	1 18 6	2 8 0

TABLE OF FEES—continued.

ADMINISTRATIONS, AND ADMINISTRATIONS WITH WILL ANNEXED.									
	Under what Sun the Effects sworn.	Where the Deceased was a Warrant or Petty Officer in the Navy, or a Non-commissioned Officer of Marines.				Where the Deceased was a Common Seaman or Marine.			
		If the Administrator be a Wife, Child, Parent, Brother, or Sister of the Deceased.		If the Administrator be more remotely related, or a Stranger in Blood to him.		If the Administrator be a Wife, Child, Parent, Brother, or Sister of the Deceased.		If the Administrator be more remotely related, or a Stranger in Blood to him.	
		Administra- tions Intestate.	Administra- tions with Will annexed.	Administra- tions Intestate.	Administra- tions with Will annexed.	Administra- tions Intestate.	Administra- tions with Will annexed.	Administra- tions Intestate.	Administra- tions with Will annexed.
If the Adminis- trator sworn in London ..	£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
	20	0 12 3	0 15 0	1 3 0	1 8 0	0 12 6	0 15 0	1 3 0	1 8 0
	50	2 5 6	2 9 0	2 16 0	3 2 0	0 16 0	0 19 6	2 6 6	2 12 6
	100	3 3 6	2 18 6	3 19 0	3 16 6	1 4 0	1 9 0	2 19 6	3 7 0
If the Adminis- trator sworn in the Country by Commission ..	20	0 19 6	1 2 0	1 13 6	1 18 6	0 19 6	1 2 0	1 13 6	1 18 6
	50	2 17 0	3 0 6	3 13 0	3 19 0	1 7 6	1 11 0	2 3 6	3 9 6
	100	3 18 0	3 13 0	4 15 0	4 12 6	1 18 6	2 3 6	3 15 6	4 3 0

The 63rd section enacts:—

That when the executor or administrator of a deceased petty officer or seaman, non-commissioned officer of marines or marine, shall die before he shall have received the wages, prize money, or other allowances payable to his testator or intestate, it shall be lawful for the inspector to investigate the right of any person claiming payment of the same, or to represent according to law the person of such deceased petty officer or seaman, noncommissioned officer of marines or marine, and, being satisfied of such right, to certify the name and place of abode of such person upon the check or certificate, and that in his judgment the claimant is the rightful representative of such deceased petty officer or seaman, noncommissioned officer of marines or marine, and entitled to receive whatever may remain due in respect of his services as aforesaid; and thereupon, if the wages, prize money, and other allowances remaining unpaid shall appear to the inspector not to amount nor likely to amount to more than the sum of twenty pounds, then it shall be lawful for the said treasurer, and also for any agent or agents for prizes respectively, to pay to such person all wages, pay, prize money, bounty money, and other allowances of money so due or to become payable, without requiring him to take out fresh letters of administration; but if the same shall amount or appear to the said inspector to be likely to amount to more than that sum, then the same shall only be paid upon fresh letters of administration, to be obtained in the manner hereinbefore directed.

Section 64 enacts:—

That no letters of administration shall be granted to any person claiming as a creditor of any deceased petty officer or seaman, non-commissioned officer of marines or marine; but that every such creditor shall be entitled to receive the amount of his claim (if just) out of the assets of the deceased, or so far as the same will extend for that purpose, when the just amount of the debt or claim shall have been ascertained and approved as hereinafter provided; (that is to say,) every person claiming as a creditor shall deliver to the said inspector an account in writing, subscribed with his name, stating the particulars of the demand and the place of his abode, and verified by his oath, or, being a Quaker, by his affirmation in writing taken before any justice of the peace, which oath or affirmation any such justice is hereby empowered to administer; and if any application for a certificate to obtain probate of the will or letters of administration to the effects of the deceased shall be made, the inspector shall give notice to the applicant of the name and place of abode of the creditor, and the amount of the debt, and shall also cause notice to be given to the creditor of the place of abode of such applicant; but if no such application shall have been made at the time of the delivery of the claim, the inspector or other person authorized by the said treasurer shall proceed to investigate the account of such creditor, for which purpose he is hereby empowered and directed to require from such creditor a production before him of all books, accounts, vouchers, and papers relating to his demand, and

satisfactory evidence thereof; and if such creditor shall, by due proof satisfy the said inspector or other authorized person of the justice of the demand in part or in the whole, then the same shall be allowed as shall appear just; but if all books, accounts, vouchers, and papers shall not be produced, or a sufficient reason assigned for not producing the same, or if the said inspector or other authorized person shall not be satisfied of the justice of the demand, then he shall disallow the same: provided always, that in case such creditor shall be dissatisfied, he shall be at liberty to appeal against such decision to the said treasurer, who shall thereupon inquire into the same by the examination of the parties and their witnesses upon oath or affirmation taken or made before the said treasurer or any justice of the peace (which oath or affirmation the said treasurer and any justice as aforesaid are hereby severally authorized to administer), and to allow or disallow the claim, in part or in the whole, as to the said treasurer shall seem fit, and the decision of the said treasurer shall be final and conclusive in the premises: provided always, that no claim of any creditor shall be admitted or allowed unless the same be made within two years next after the death of the party upon whose assets the claim is made, nor unless the same shall appear to have accrued within three years next before the death of such party.

Section 65 enacts:—

That if within the space of twelve calendar months from the delivery of the claim no application shall have been made by any person in the character either of executor or administrator, the creditor shall be entitled to receive so much as shall have been allowed to be due to him as aforesaid out of the moneys payable in respect of the services of the deceased, so far as they will extend to satisfy the same, and thereupon the inspector shall grant to the creditor a certificate of the allowance of such claim in the form heretofore used, or in such other form as shall by the said treasurer be deemed expedient, and so much of such wages as shall be sufficient to satisfy the claim so allowed shall be paid or remitted to the creditor in the manner herein provided for the remittance of wages to executors or administrators: provided always, that if any prize money or bounty money shall be due to the deceased, the same shall be payable to such creditor only in the manner hereinafter directed; (that is to say), if the wages and other allowances of money shall not be sufficient to discharge the claim, the proper officer in the navy pay office shall state at the foot of the certificate the amount paid to the creditor, and it shall not be lawful for the creditor to demand or receive from any person any prize money or bounty money due to the deceased except as hereinafter next mentioned; (that is to say), such prize and bounty money, if the same shall be in the hands of an agent, shall be paid over as in cases of unclaimed prize money, and the creditor, on the production of such certificate to the officer appointed to pay the prize money, shall be entitled to receive from him so much of the deceased's prize money, or other allowances as shall be sufficient to discharge his demand, and upon the same being satisfied

the inspector shall retain the certificate as a voucher or document of office: provided also, that if there shall be more creditors than one they shall be satisfied according to the priority of the allowance of their respective claims, but so as not to deprive any creditor of any priority he may by law be entitled to by reason of any specialty, provided notice in writing of the particulars of such specialty shall have been given to the treasurer of the navy in due time.

Section 69 enacts :—

That in all cases when any moneys not exceeding twenty pounds shall be due on account of any wages, prize money, or other allowances payable on account of the services of any deceased petty officer, seaman, noncommissioned officer of marines or marine, it shall be lawful for the inspector of seamen's wills, after having by the requisite previous steps, as before directed, ascertained the right of any claimant to probate of the will or to administration of the effects of the deceased, to issue a check or certificate to that effect, in such form as by the treasurer of the navy shall be deemed expedient; and to the same end, in all cases when any moneys not exceeding in the whole the sum of thirty-two pounds shall be payable on account of any pay or half-pay or pension of any deceased officer of the navy or royal marines, or of any pension to any deceased widow of an officer, or on account of any allowance from the Compassionate Fund to any deceased person, it shall be lawful for the said treasurer of the navy⁽¹⁾ or for the paymaster of royal marines, as the case may be, after having ascertained in a satisfactory manner the right of any claimant to probate of the will or to letters of administration of the effects of the deceased, and that the deceased has not left any other assets to be administered than the arrears of pay, half-pay, pension, or allowance, not exceeding thirty-two pounds as aforesaid, to issue a certificate to that effect, in such form as shall be deemed expedient; and upon such check or certificate of the inspector, and upon such certificate of the treasurer of the navy and paymaster of royal marines respectively, payment of the moneys so due, not exceeding the respective sums of twenty pounds and thirty-two pounds as aforesaid, shall be made to the parties named in such checks and certificates respectively, either personally, or, if they shall desire it, by remittance bill in the manner by this act provided with respect to payments by remittance; and all payments made under such checks and certificates, not exceeding the respective sums aforesaid, shall be as effectual and legal as if the same had been made under any probate of a will or letters of administration duly granted by the proper court, and shall be allowed to the said treasurer and paymaster of royal marines in their respective accounts.

The act 4 & 5 Will. 4, c. 25, sect. 8 enacts :—

That from and after the thirtieth day of September one thousand

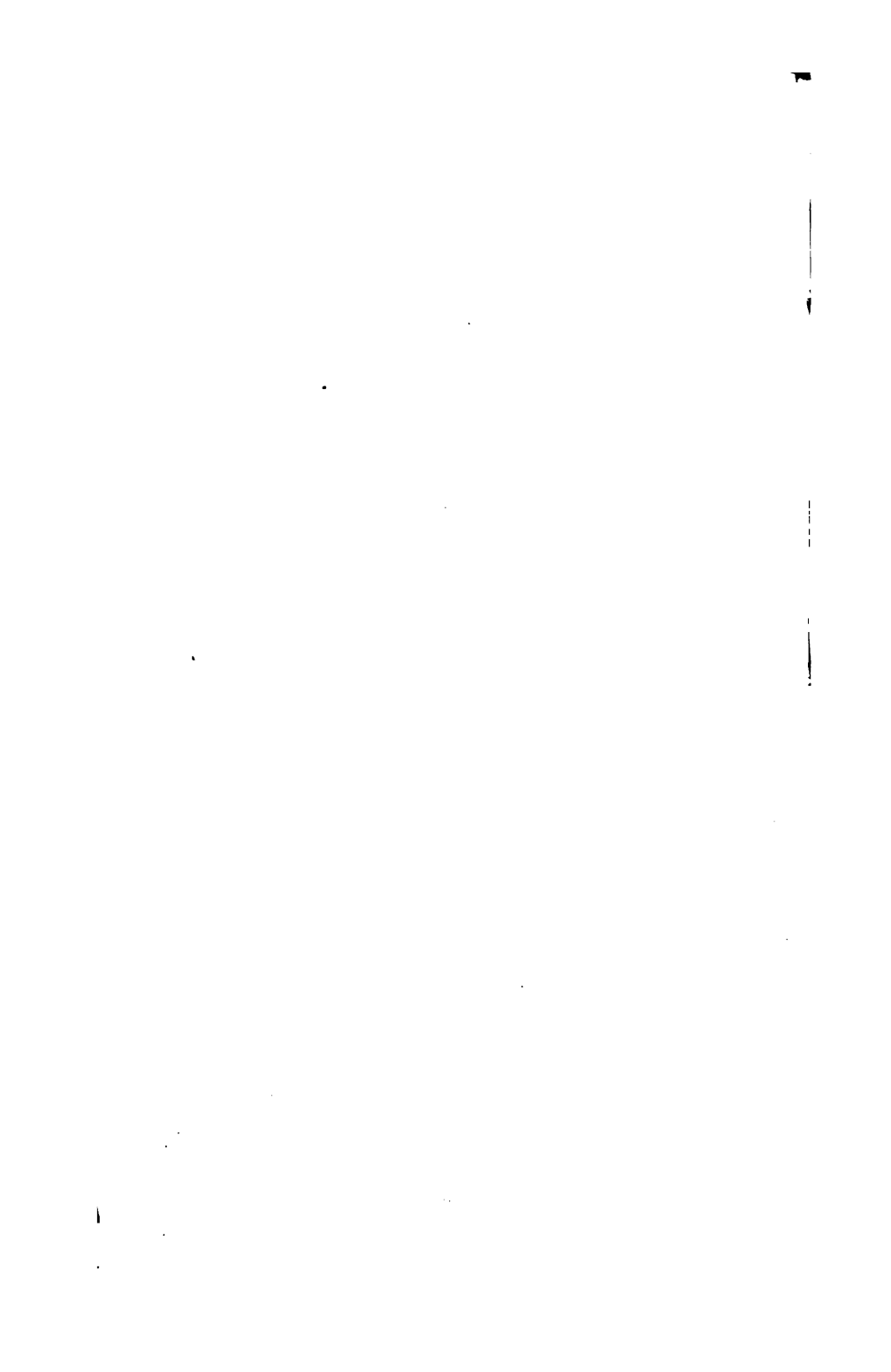
(1) The stat. 2 Will. 4, c. 40, ss. 12, 13, transfers this duty to the inspector of seamen's wills, to whom the letter of application is to be addressed, and forwarded to the secretary of the Admiralty: (sect. 33.)

eight hundred and thirty-four, in the case of the death of any commissioned, warrant, or petty officer, seaman, commissioned or non-commissioned officer of royal marines, or private marine, or of any widow entitled to a pension on the establishment of the navy, or of any person entitled to an allowance from the Compassionate Fund, or of any person having been employed in any of His Majesty's dockyards, naval, victualling, or medical establishments, or in any of the civil departments of the navy, or of any person entitled to any prize money, bounty, grant, or other money in the nature of naval prize, and respectively leaving assets to be administered which shall not in the whole exceed the sum of thirty-two pounds, it shall be lawful for the inspector of seamen's wills in the Admiralty Office, after having satisfied himself, by due investigation of the right of any claimant to probate of the will if the deceased shall have left a will, or, in case of intestacy, to letters of administration, and also on due proof, to the satisfaction of the inspector, that the assets of the deceased to be administered do not in the whole exceed the sum of thirty-two pounds, to issue a certificate to that effect and in admission of the claim, which certificate shall be in such form as by the commissioners for executing the office of Lord High Admiral aforesaid shall be deemed expedient, and so far as regards any moneys payable in the naval department, and not exceeding thirty-two pounds, shall have the same force and effect as a probate of the deceased's will, or a grant of administration of the deceased's effects, could or might have; and that payment to be made under the authority of such certificate of any moneys not exceeding the said sum of thirty-two pounds, due to the deceased on account of any naval pay or wages, or pay or wages of the ordinary, or any marine pay, or of any half-pay, pension, or prize, or bounty, grant, or other money in the nature of prize, or of any allowance from the Compassionate Fund, or moneys due on account of the deceased's services, or superannuation allowances granted on retirement from any services in any of his Majesty's dockyards, naval victualling, or medical establishments, or in any of the civil departments of the navy, or any department under the direction of the said commissioners, shall be valid and conclusive against all parties as effectually as if the same had been paid under probate or letters of administration, and shall be allowed to the treasurer of the navy in his accounts.

The statute 1 Will. 4, c. 41, s. 5, enables the commissioners of Chelsea Hospital, as to pension or prize money, and the secretary at war, of his own proper authority, with respect to pay, to authorize the payment of pension, prize money, or pay, provided the same does not exceed 50*l.* to any person or persons giving satisfactory proof of being the next of kin or legal representative to the deceased officer, non-commissioned officer, soldier, or pensioner entitled to the same, without taking out letters of administration or probate. The stat. 2 & 3 Will. 4, c. 53, contains

some further regulations concerning the payment of prize money to the representatives of deceased soldiers.

Sect. 25 enables the commissioners of Chelsea Hospital to pay, without probate or administration, any *share* of prize money not amounting to 50*l.* to any person proving him or herself to be entitled thereto as next of kin or legal representative to the deceased officer or soldier to whom the prize money belonged; and sect. 26 enables prize money in all cases to be paid to the next of kin or legal representative of foreigners in her Majesty's service, without probate or letters of administration being required.



THE STATUTE

20 & 21 VICT. CAP. 77.

Sect.

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An Act to amend the Law relating to Probates and Letters of Administration in England.—[25th August, 1857.]

Preamble.—Whereas it is expedient that all jurisdiction in relation to the grant and revocation of probates of wills and letters of admini-

stration in England should be exercised, in the name of Her Majesty, by one court : be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows :

Sect. 1. Commencement of act.—This act (except where otherwise specially provided) shall come into operation on such day, not sooner than the first day of January, one thousand eight hundred and fifty-eight, as Her Majesty shall by order in council appoint, provided that such order shall be made one month at least previously to the day so to be appointed.

2. Interpretation of terms.—In the construction of this act, unless the context be inconsistent with the meaning hereby assigned :

“Will” shall comprehend “testament” and all other testamentary instruments of which probate may now be granted :

“Administration” shall comprehend all letters of administration of the effects of deceased persons, whether with or without the will annexed, and whether granted for general, special, or limited purposes :

“Matters and causes testamentary” shall comprehend all matters and causes relating to the grant and revocation of probate of wills or of administration :

“Common form business” shall mean the business of obtaining probate and administration where there is no contention as to the right thereto, including the passing of probates and administrations through the Court of Probate in contentious cases when the contest is terminated, and all business of a non-contentious nature to be taken in the court in matters of testacy and intestacy, not being proceedings in any suit, and also the business of lodging caveats against the grant of probate or administration.

3. Testamentary jurisdiction of ecclesiastical and other courts abolished.—The voluntary and contentious jurisdiction and authority of all ecclesiastical, royal peculiar, peculiar, manorial, and other courts and persons in England, now having jurisdiction or authority to grant or revoke probate of wills or letters of administration of the effects of deceased persons, shall in respect of such matters absolutely cease ; and no jurisdiction or authority in relation to any matters or causes testamentary, or to any matter arising out of or connected with the grant or revocation of probate or administration, shall belong to or be exercised by any such court or person.

4. Testamentary jurisdiction to be exercised by a Court of Probate.—The voluntary and contentious jurisdiction and authority in relation to the granting or revoking probate of wills and letters of administration of the effects of deceased persons now vested in or which can be exercised by any court or person in England, together with full authority to hear and determine all questions relating to matters and causes testamentary, shall belong to and be vested in Her Majesty, and shall, except as hereinafter is mentioned, be exercised in the name of Her Majesty in a court to be called the Court of Probate, and to hold its

ordinary sittings and to have its principal registry at such place or places in London or Middlesex as Her Majesty in council shall from time to time appoint.

5. *Power to Her Majesty to appoint a judge of the Court of Probate.*—There shall be one judge of Her Majesty's Court of Probate; and it shall be lawful for Her Majesty from time to time, by letters patent under the great seal of the United Kingdom, to appoint a person, being or having been an advocate of ten years standing, or a barrister-at-law of fifteen years standing, to be such judge.

6. *Judge's tenure of office.*—The judge of the Court of Probate shall hold his office during good behaviour, provided that it shall be lawful for Her Majesty to remove any such judge from his office upon an address of both houses of Parliament.

7. *Judge before acting to take the following oath.*—Every judge of the Court of Probate shall, before executing any of the duties of his office, take the following oath, which the Lord Chancellor or the Master of the Rolls for the time being is hereby respectively authorized and required to administer:

"I A. B. do solemnly and sincerely promise and swear, that I will duly and faithfully, and to the best of my skill and power, execute the office of judge of the Court of Probate. So help me God."

8. *Rank and precedence of judge, who shall appoint a secretary and usher.*—The judge shall have rank and precedence with the puisne judges of Her Majesty's superior courts of common law at Westminster according to the date of his appointment, and he shall have a secretary and usher, to be from time to time appointed and removed by him at his pleasure.

9. *Salaries of judge, secretary, and usher.*—There shall be paid to the judge the net yearly salary of four thousand pounds, and to his secretary the net yearly salary of three hundred pounds, and to his usher the net yearly salary of one hundred and fifty pounds.

10. *Judge of Court of Probate to be also judge of the Admiralty Court on the next vacancy.*—Upon the next vacancy in the office of judge of the High Court of Admiralty of England it shall be lawful for Her Majesty, if she so think fit, to appoint the person then being judge of the Court of Probate to be also judge of the said Court of Admiralty, or in case the office of judge of the Court of Probate become vacant before the office of judge of the Court of Admiralty, the judge of the Court of Admiralty may, with his consent, be appointed to and hold also the office of judge of the Court of Probate, and after the union of the said two offices they shall be thenceforth held by the same person.

11. *As to increase of salary upon union of the two offices.*—From and after the union under this act of the two offices of judge of the Court of Probate and judge of the Court of Admiralty in the same person, the said yearly salary of four thousand pounds payable under this act shall be increased to five thousand pounds, and the salary now payable to the judge of the Court of Admiralty shall cease.

12. *Retiring pensions of judges.*—Her Majesty, by letters patent under the great seal of the United Kingdom, may grant unto any person executing the office of judge of Her Majesty's Court of Probate

an annuity, not exceeding two thousand pounds, or if such person be also executing the office of judge of the said Court of Admiralty, not exceeding three thousand five hundred pounds, to commence immediately after the day when the person to whom such annuity shall be granted shall resign the said office or offices, and to continue during his natural life; provided that Her Majesty may, in and by such letters patent, limit the duration of payment of such annuity, or any part thereof, to such periods of time during the natural life of such person in which he shall not exercise any office of profit under Her Majesty, so that such annuity, together with the salary and profits of such other office, shall, together not exceed in the whole the said sum of two thousand pounds or three thousand five hundred pounds, as the case may be: provided also, that no annuity granted to any person having executed the office of judge under this act, except the present judge of the Prerogative Court, shall be valid unless such person shall have held such office for the period of fifteen years, or have held such office and any of the offices of judge in any of the superior courts of law or equity or the High Court of Admiralty for periods amounting together to fifteen years, or shall be afflicted with some permanent infirmity disabling him from the due execution of his office, which shall be distinctly recited in the said grant.

13. *District registries to be established as in schedule (A).*—There shall be established for each of the districts specified in schedule (A.) to this act, and at the places respectively mentioned in such schedule, a public registry attached to and under the control of the Court of Probate, hereinafter referred to as "the District Registry."

14. *Appointment of officers of the Court of Probate.*—There shall be three registrars, two record keepers, and one sealer for the principal registry of the Court of Probate, and there shall be one district registrar for each district registry hereinafter referred to as the district registrar, and there shall be so many clerks and other officers for the court and the principal registry as the judge of the court, with the sanction of the commissioners of Her Majesty's Treasury, may from time to time think fit: provided, that if at any time it appear to Her Majesty in council that the duties of the registrars of the principal registry of the Court of Probate can be performed by two registrars, it shall be lawful for Her Majesty by order in council to direct that the number of registrars for such principal registry be reduced accordingly.

15. *As to appointment of the first officers of the principal registry.*—Charles Dyneley, Esquire, John Iggulden, Esquire, and William F. Gostling, Esquire, the present deputy registrars of the Prerogative Court of Canterbury, shall, if willing to accept the office, be the first registrars of the principal registry of the Court of Probate; Joseph Todd and John Smith, the present record keepers of the said Prerogative Court, shall, if willing to accept the office, be the first record keepers at the said principal registry; and William John Berry, the present sealer of the said Prerogative Court, shall, if willing to accept the office, be the first sealer at the said principal registry; and George Jarvis Foster, clerk of the papers in the said Prerogative Court, shall, if willing to accept the office, be the first clerk of papers at the said principal registry.

16. *Clerks and officers of Prerogative Court to be transferred to like offices in Court of Probate.*—The other clerks and officers now employed in the said Prerogative Court shall be transferred to such situations in the Court of Probate and the principal registry thereof as the Lord Chancellor may in that behalf direct, so that their duties may be such as, in the opinion of the said Lord Chancellor, may be as nearly as possible similar to those which they have heretofore discharged in the said Prerogative Court: provided always, that no such clerk or other officer shall be so transferred whom the said Lord Chancellor shall consider to be from age, infirmity, or other cause, incompetent to the discharge of his duties.

17. *Existing diocesan registrars to be entitled to be appointed district registrars at the same places.*—The registrar or deputy registrar (as the case may be) now executing in person the duties of registrar of a diocesan or other court exercising testamentary jurisdiction at any place at which a district registry is to be established under this act, or where there is more than one such registrar or deputy registrar so acting such one of them as the judge shall select, shall be appointed the first district registrar for such district, save where the judge shall consider such registrar or deputy registrar, or all such registrars or deputy registrars if more than one, to be from age, infirmity, or other cause incompetent to the discharge of the duties of district registrar; provided that where there is now more than one such registrar or deputy registrar competent to the discharge of the duties, the judge may appoint them or more than one of them to hold such office of district registrar jointly with benefit of survivorship.

18. *As to appointment to offices—Salaries of officers.*—The registrars, district registrars, and other officers of the Court of Probate, except as herein provided, shall be appointed by the judge: there shall be paid to the several officers mentioned in schedule (B.) to this act the several salaries set opposite to their respective titles in the same schedule, and the said district registrars shall, for the performance of their duties under this act, including the services of any clerks they may employ, be entitled to take in respect of the business in their respective district registries such fees as shall be fixed as hereinafter provided; and, except as aforesaid, there shall be paid to the several clerks and other officers appointed under this act such salaries or other remuneration as the judge, with the consent of the commissioners of Her Majesty's Treasury, shall from time to time in each case direct.

19. *Tenure of office of officers.*—The registrars and district registrars shall hold their offices during good behaviour, subject to be removed by order of the Lord Chancellor for some reasonable cause to be in such order expressed; and the other officers of the court may be removed by the judge, with the sanction of the Lord Chancellor.

20. *Qualification of registrars and district registrars.*—No person shall be appointed a registrar or district registrar who shall not be or have been an advocate, barrister-at-law, proctor, solicitor, or attorney-at-law, unless at the time of the passing of this act he is performing in person the duties of registrar or deputy registrar of some ecclesiastical court in England, or is acting as articulated clerk or paid clerk to a

proctor in Doctors Commons, or as officer or clerk in the office of the the said Prerogative Court, or of the Prerogative Court of York, or of any diocesan court.

21. *Officers of the court to execute their offices in person*—*Registrars, &c. not to act as proctors, &c.*—All registrars, district registrars, officers, and clerks of the Court of Probate shall execute their respective offices in person and not by deputy; and no registrar of the principal registry of the court, nor any officer or clerk in the principal registry thereof, shall during the time of his holding such office directly or indirectly practise as an advocate, barrister, proctor, solicitor, or attorney, or receive or participate in the fees of any other person so practising.

22. *Power to judge to cause seals of the court to be provided.*—The judge shall cause to be made seals for the Court of Probate, that is to say, one seal to be used in its principal registry, and separate seals to be used in the several district registries, and may cause the same respectively from time to time to be broken, altered, and renewed at his discretion; and all probates, letters of administration, orders, and other instruments, and exemplifications and copies thereof, respectively, purporting to be sealed with any seal of the Court of Probate, shall in all parts of the United Kingdom be received in evidence without further proof thereof.

23. *The court to have throughout all England the same powers as the Prerogative Court within the province of Canterbury*—*Suits for legacies or distribution not to be entertained.*—The Court of Probate shall be a court of record, and such court shall have the same powers, and its grants and orders shall have the same effect, throughout all England, and in relation to the personal estate in all parts of England of deceased persons, as the Prerogative Court of the Archbishop of Canterbury and its grants and orders respectively now have in the province of Canterbury, or in the parts of such province within its jurisdiction, and in relation to those matters and causes testamentary and those effects of deceased persons which are within the jurisdiction of the said Prerogative Court; and all duties which, by statute or otherwise, are imposed on or should be performed by ordinaries generally, or on or by the said Prerogative Court, in respect of probates, administrations, or matters or causes testamentary within their respective jurisdictions, shall be performed by the Court of Probate: provided that no suits for legacies, or suits for the distribution of residues, shall be entertained by the court, or by any court or person whose jurisdiction as to matters and causes testamentary is hereby abolished.

24. *Power to examine witnesses*—*As to production of deeds, &c.*—The Court of Probate may require the attendance of any party in person, or of any person whom it may think fit to examine or cause to be examined in any suit or other proceeding in respect of matters or causes testamentary, and may examine or cause to be examined upon oath or affirmation, as the case may require, parties and witnesses by word of mouth, and may, either before or after or with or without such examination, cause them or any of them to be examined on interrogatories, or receive their or any of their affidavits or solemn affirmations,

as the case may be; and the court may by writ require such attendance, and order to be produced before itself or otherwise any deeds, evidences, or writings, in the same form, or nearly as may be, as that in which a writ of subpoena ad testificandum, or of subpoena duces tecum, is now issued by any of Her Majesty's superior courts of law at Westminster; and every person disobeying any such writ shall be considered as in contempt of the court, and also be liable to forfeit a sum not exceeding one hundred pounds.

25. *Powers of the court to enforce orders.*—The Court of Probate shall have the like powers, jurisdiction, and authority for enforcing the attendance of persons required by it as aforesaid, and for punishing persons failing, neglecting, or refusing to produce deeds, evidences, or writings, or refusing to appear or to be sworn, or make affirmation or declaration, or to give evidence, or guilty of contempt, and generally for enforcing all orders, decrees, and judgments made or given by the court under this act, and otherwise in relation to the matters to be inquired into and done by or under the orders of the court under this act, as are by law vested in the High Court of Chancery for such purposes in relation to any suit or matter depending in such court.

26. *Order to produce any instrument purporting to be testamentary.*—The Court of Probate may, on motion or petition, or otherwise, in a summary way, whether any suit or other proceeding shall or shall not be pending in the court with respect to any probate or administration, order any person to produce and bring into the principal or any district registry, or otherwise as the court may direct, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person; and if it be not shown that any such paper or writing is in the possession or under the control of such person, but it shall appear that there are reasonable grounds for believing that he has the knowledge of any such paper or writing, the court may direct such person to attend for the purpose of being examined in open court, or upon interrogatories respecting the same, and such person shall be bound to answer such questions or interrogatories, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions or interrogatories, or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit in the court and had made such default; and the costs of any such motion, petition, or other proceeding shall be in the discretion of the court.

27. *Registrars, &c. to have power to administer oaths.*—*Power to appoint, also, commissioners to administer oaths, &c.*—The registrars and district registrars shall respectively have full power to administer oaths; and all persons who at the commencement of this act shall be acting as surrogates of any ecclesiastical court, and any other persons whom the judge shall, under the seal of the court, from time to time appoint, shall respectively have full power to administer oaths and perform such other duties in reference to matters and causes testamentary as may be assigned to them from time to time by the Rules and Orders under this act; and the persons so appointed shall be

styled "Commissioners of Her Majesty's Court of Probate:" provided, that any party required to be examined, or any person called as a witness or required or desiring to make an affidavit or deposition under or for the purposes of this act, shall be permitted to make his solemn affirmation or declaration instead of being sworn in the circumstances and manner in which a person called as a witness or desiring to make an affidavit or deposition would be permitted so to do under the Common Law Procedure Act, 1854, in cases within the provisions of that act; and any person who shall wilfully give false evidence, or who shall wilfully swear, affirm, or declare falsely in any affidavit or deposition before the Court of Probate, or before any registrar, district registrar, or commissioner of the court, shall be liable to the penalties and consequences of wilful and corrupt perjury.

28. *Penalty on forging or counterfeiting seals or signatures of officers.*—If any person forge the signature of any registrar, district registrar, or commissioner for taking oaths, or forge or counterfeit any seal of the Court of Probate, or knowingly use or concur in using any such forged or counterfeit signature or seal, or tender in evidence any document with a false or counterfeit signature of such registrar, district registrar, or commissioner, or with a false or counterfeit seal, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall upon conviction be liable to penal servitude for the term of his life or any term not less than seven years, or to imprisonment for any term not exceeding three years, with or without hard labour.

29. *Practice of the court.*—The practice of the Court of Probate shall, except where otherwise provided by this act, or by the rules or orders to be from time to time made under this act, be, so far as the circumstances of the case will admit, according to the present practice in the Prerogative Court.

30. *Rules and orders to be made for regulating the procedure of the court.*—And to the intent and end that the procedure and practice of the court may be of the most simple and expeditious character, it shall be lawful for the Lord Chancellor, at any time after the passing of this act, with the advice and assistance of the Lord Chief Justice of the Court of Queen's Bench, or any one of the judges of the superior courts of law to be by such chief justice named in that behalf, and of the judge of the said Prerogative Court, to make rules and orders, to take effect when this act shall come into operation, for regulating the procedure and practice of the court, and the duties of the registrars, district registrars, and other officers thereof, and for determining what shall be deemed contentious and what shall be deemed non-contentious business, and, subject to the express provisions of this act, for fixing and regulating the time and manner of appealing from the decisions of the said court, and generally for carrying the provisions of this act into effect; and after the time when this act shall come into operation it shall be lawful for the judge of the Court of Probate from time to time, with the concurrence of the Lord Chancellor and the said Lord Chief Justice, or any one of the judges of the superior courts of law to be by such chief justice named in this behalf, to repeal, amend, add to, or alter

any such rules and orders as to him, with such concurrence as aforesaid, may seem fit.

31. *Mode of taking evidence in contentious matters.*—Subject to the regulations to be established by such rules and orders as aforesaid, the witnesses, and where necessary the parties, in all contentious matters where their attendance can be had, shall be examined orally by or before the judge in open court: provided always, that, subject to any such regulations as aforesaid, the parties shall be at liberty to verify their respective cases, in whole or in part, by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of such opposite party orally in open court as aforesaid, and after such cross-examination may be re-examined orally in open court as aforesaid by or on behalf of the party by whom such affidavit was filed.

32. *Court may issue commissions or give orders for examination of witnesses abroad, or who are unable to attend.*—Provided, that where a witness in any such matter is out of the jurisdiction of the court, or where, by reason of his illness or otherwise, the court shall not think fit to enforce the attendance of the witness in open court, it shall be lawful for the court to order a commission to issue for the examination of such witness on oath, upon interrogatories or otherwise, or if the witness be within the jurisdiction of the court to order the examination of such witness on oath, upon interrogatories or otherwise, before any officer of the said court, or other person to be named in such order for the purpose; and all the powers given to the courts of law at Westminster by the acts of the thirteenth year of King George the Third, chapter sixty-three, and of the first year of King William the Fourth, chapter twenty-two, for enabling the courts of law at Westminster to issue commissions and give orders for the examination of witnesses in actions depending in such courts, and to enforce such examination, and all the provisions of the said acts, and of any other acts for enforcing or otherwise applicable to such examination, and the witnesses examined, shall extend and be applicable to the said Court of Probate and to the examination of witnesses under the commissions and orders of the said court, and to the witnesses examined, as if such court were one of the courts of law at Westminster, and the matter before it were an action pending in such court.

33. *Rules of evidence in common law courts to be observed.*—The rules of evidence observed in the superior courts of common law at Westminster shall be applicable to and observed in the trial of all questions of fact in the Court of Probate.

34. *Common law judges may sit, on request of judge of court.*—It shall be lawful for the judge of the Court of Probate to sit, with the assistance of any judge or judges of any of the superior courts of law at Westminster, who, upon the request of the judge of the Court of Probate, may find it convenient to attend for that purpose.

35. *Court may cause questions of fact to be tried by a jury before itself, or direct an issue to a court of law.*—It shall be lawful for the Court of Probate to cause any question of fact arising in any suit or proceeding under this act to be tried by a special or common jury before

the court itself, or by means of an issue to be directed to any of the superior courts of common law, in the same manner as an issue may now be directed by the Court of Chancery, and such question shall be so tried by a jury in any case where an heir-at-law, cited or otherwise made party to the suit or proceeding, makes application to the Court of Probate for that purpose; and in any other case where all the parties to the suit or proceeding concur in such an application, and where any party or parties other than such heir-at-law make a like application (the other party or parties not concurring therein), and the court shall refuse to cause such question to be tried by a jury, such refusal of the court shall be subject to appeal as herein provided.

36. *Powers of the court for the trial of questions by a jury.*—When the court shall order a question of fact to be tried before itself by a jury, the court may make all such rules and orders upon the sheriff or any other person for procuring the attendance of a special or common jury for the trial of such question as may now be made by any of the superior courts of common law at Westminster, and may also make any other orders which to such court may seem requisite; and every such jury shall consist of persons possessing the qualifications, and shall be struck, summoned, balloted for, and called in like manner as if such jury were a jury for the trial of any cause in any of the said superior courts; and every jurymen so summoned shall be entitled to the same rights, and subject to the same duties and liabilities, as if he had been duly summoned for the trial of any such cause in any of the said superior courts; and every party to any such proceeding shall be entitled to the same rights as to challenge and otherwise as if he were a party to any such cause; and generally for all purposes of or auxiliary to the trial of questions of fact by a jury before the court itself, and in respect of new trials thereof, and also for all purposes in relation to or consequential upon the direction of issues, the Court of Probate shall have the same jurisdiction, powers, and authority in all respects as belong to any superior court of common law, or to any judge thereof, or to the High Court of Chancery, or any judge thereof, for the like purposes.

37. *Question to be stated, and jury sworn to try—Court, on trial, to have the same authority as a judge at Nisi Prius.*—When any such question shall be so ordered to be tried by a jury before the court itself, such question shall be reduced into writing in such form as the court shall direct, and at the trial the jury shall be sworn to try the said question, and a true verdict to give thereon according to the evidence; and upon every such trial the Court of Probate shall have the same powers, jurisdiction, and authority as belong to any judge of any of the said superior courts sitting at Nisi Prius.

38. *Court may direct where issues shall be tried.*—Where the Court of Probate directs an issue, it shall be lawful for such court to direct such issue to be tried either before a judge of assize in any county or at the sittings for the trial of causes in London or Middlesex, and either by a special or common jury, in like manner as is now done by the Court of Chancery.

39. *Appeal to the House of Lords.*—Any person considering himself

aggrieved by any final or interlocutory decree or order of the Court of Probate may appeal therefrom to the House of Lords: provided always, that no appeal from any interlocutory order of the Court of Probate shall be made without leave of the Court of Probate first obtained, but on the hearing of an appeal from any final decree all interlocutory orders complained of shall be considered as under appeal as well as the final decree.

40. *Advocates admitted to practise—Barristers may practise in contentious causes.*—All persons who at the time of the passing of this act have been admitted advocates in any of the ecclesiastical courts shall be entitled to practise as advocates or counsel in all matters and causes whatsoever in the Court of Probate; and all serjeants and barristers-at-law shall be entitled to practise as advocates or counsel in all contentious matters and causes in the said court; and such persons who have been so admitted advocates and serjeants and barristers-at-law shall have respectively the same rank and precedence which they now have before the Judicial Committee of the Privy Council, unless and until Her Majesty shall otherwise order.

41. *Advocates admitted to practise as barristers.*—All persons who at the time of the passing of this act have been admitted as advocates as aforesaid shall be entitled to practise as counsel in any of Her Majesty's courts of law or equity in England, with the same eligibility to appointments, under acts of Parliament or otherwise, as if they had respectively been duly called to the degree of barrister-at-law on the days which they respectively were so admitted as advocates, and with the same rank and precedence which they now have before the said judicial committee, unless and until Her Majesty shall otherwise order.

42. *Proctors admitted to practise.*—Every person who at the time of the passing of this act is actually admitted and practising as a proctor in the courts in Doctors Commons, or in the Prerogative Court of York, or in any diocesan court, or in any archidiaconal court, having previously duly served under articles of clerkship either to an attorney or proctor, may, upon his application, at any time within one year after the passing of this act, be admitted a proctor of the Court of Probate, without payment of any fee or stamp duty.

43. *Admission of registrars and proctors as solicitors.*—Every person who at the time of the commencement of this act is acting as registrar or deputy registrar of any ecclesiastical court, or is actually admitted and practising as a proctor in the courts in Doctors Commons, or in any ecclesiastical court in England or Wales, may, within one year after the passing of this act, be admitted, without the payment of any stamp duty, fee, charge, or gratuity whatsoever, as a solicitor of the High Court of Chancery, upon the production of his appointment or admission as such registrar, deputy registrar, or proctor, or an official certificate thereof; and upon the production of an official certificate that such appointment or admission continued in force at the time of the passing of this act, and upon signing the roll of solicitors of the High Court of Chancery, but not otherwise, such person shall be entitled to be admitted as a solicitor of such court, and to be afterwards

in like manner admitted and enrolled as an attorney of Her Majesty's superior courts.

44. *Admission of articulated clerks to proctors as solicitors.*—Every person who at the time of the commencement of this act has served or is actually serving as an articulated clerk to a proctor entitled to take such articulated clerk, and who has not been admitted as a proctor, shall be entitled to be admitted as a solicitor of the High Court of Chancery, in the same manner, and subject to the same rules and regulations, and upon the same conditions as if he had before the commencement of this act been articulated to a solicitor or to an attorney-at-law; and such admission shall entitle such articulated clerk so admitted as a solicitor to be afterwards in like manner admitted and enrolled as an attorney of Her Majesty's superior courts; provided, that if any such proctor to whom any such clerk is now articulated shall retire from practice after the passing of this act, he shall and is hereby required to transfer such articulated clerk to some other proctor or to a solicitor, or to an attorney-at-law, for the unexpired term of his articles of clerkship; provided that the court shall at any time have the same power to transfer such clerk, during the unexpired term of his articles of clerkship, to any other proctor, or to a solicitor, or to an attorney-at-law, as the judge of the Prerogative Court now has in respect to clerks articulated to proctors practising in the Court of Arches.

45. *Practitioners.*—All solicitors and attorneys-at-law may practise in the Court of Probate, and the laws and statutes now in force concerning solicitors and attorneys shall extend to solicitors and attorneys practising in the said court; and the commissioners for taking oaths in the High Court of Chancery shall be commissioners for taking oaths in the Court of Probate.

46. *Probates and administration may be granted in common form by district registrars, if it shall appear by affidavit that the testator, &c. had a fixed place of abode.*—Probate of a will or letters of administration, may, upon application for that purpose to the district registry, be granted in common form by the district registrar in the name of the Court of Probate and under the seal appointed to be used in such district registry, if it shall appear by affidavit of the person or some or one of the persons applying for the same that the testator or intestate, as the case may be, at the time of his death had a fixed place of abode within the district in which the application is made, such place of abode being stated in the affidavit, and such probate or letters of administration shall have effect over the personal estate of the deceased in all parts of England accordingly.

47. *Affidavit to be conclusive for authorizing grant of probate.*—Such affidavit shall be conclusive for the purpose of authorizing the grant, by the district registrar, of probate or administration; and no such grant of probate or administration shall be liable to be recalled, revoked, or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the district at the time of his death; and every probate and administration granted by any such district registrar shall effectually discharge and protect all persons paying to or dealing with any executor or administrator there-

under, notwithstanding the want of or defect in such affidavit, as is hereby required.

48. *District registrars not to make grants where there is contention, &c.*—The district registrar shall not grant probate or administration in any case in which there is contention as to the grant until such contention is terminated or disposed of by decree or otherwise, or in which it otherwise appears to him that probate or administration ought not to be granted in common form.

49. *As to transmission of notice of application for grants of probate, &c., to district registrar.*—Notice of every application to any district registrar for the grant of probate or administration shall be transmitted by such district registrar to the registrars of the principal registry by the next post after such application shall have been made; and such notice shall specify the name and description, or addition (if any), of the testator or intestate, the time of his death, and the place of his abode at his decease, as stated in the affidavit made in support of such application, and the name of the person by whom the application has been made, and such other particulars as may be directed by rules or orders under this act; and no probate or administration shall be granted in pursuance of such application until such district registrar shall have received a certificate, under the hand of one of the registrars of the principal registry that no other application appears to have been made in respect of the goods of the same deceased person, which certificate the said registrar of the principal registry shall forward as soon as may be to the district registrar; all such notices in respect of applications in the district registries shall be filed and kept in the principal registry, and the registrars of the principal registry shall, with reference to every such notice, examine all notices of such applications which may have been received from the several other district registries, and the applications which may have been made for grants of probate or administration at the principal registry, so far as it may appear necessary to ascertain whether or no application for probate or administration, in respect of the goods of the same deceased person, may have been made in more than one registry, and shall communicate with the district registrars as occasion may require in relation to such applications.

50. *District registrar in case of doubt as to grant to take the directions of the judge.*—In every case where it appears to a district registrar that it is doubtful whether the probate or letters of administration which may be applied for should or should not be granted, or where any question arises in relation to the grant, or application for the grant, of any probate or administration, the district registrar shall transmit a statement of the matter in question to the registrars of the Court of Probate, who shall obtain the directions of the judge in relation thereto, and the judge may direct the district registrar to proceed in the matter of the application according to such instructions as to the judge may seem necessary, or may forbid any further proceeding by the district registrar in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Court of Probate through its principal registry, or, if the case be within its jurisdiction, to a County Court.

51. *District registrars to transmit lists of probates and administrations, and copies of wills.*—On the first Thursday of every month, or oftener if required by any rules or orders to be made in that behalf, every district registrar shall transmit to the registrars of the principal registry a list, in such form and containing such particulars as may be from time to time required by the Court of Probate, or by any rules or orders under this act, of the grants of probate and administration made by such district registrar up to the last preceding Saturday, and not included in a previous return, and also a copy, certified by the district registrar to be a correct copy, of every will to which any such probate or administration relates.

52. *District registrars to preserve original wills.*—Every district registrar shall file and preserve all original wills of which probate or letters of administration with the will annexed may be granted by him in the public registry of the district, subject to such regulations as the judge of the Court of Probate may from time to time make in relation to the due preservation thereof, and the convenient inspection of the same.

53. *As to caveats.*—Caveats against the grant of probates or administrations may be lodged in the principal registry or in any district registry, and (subject to any rules or orders under this act) the practice and procedure under such caveats in the Court of Probate shall, as near as may be, correspond with the practice and procedure under caveats now in use in the Prerogative Court of Canterbury; and immediately upon a caveat being lodged in any district registry, the district registrar shall send a copy thereof to the registrars to be entered among the caveats in the principal registry; and immediately upon a caveat being entered in the principal registry, notice thereof shall be given to the district registrar of the district, if any, in which it is alleged the deceased resided at the time of his decease, and to any other district registrar to whom it may appear to the registrar of the principal registry expedient to transmit the same.

54. *Where personality is under 200*l*., and real property is under 300*l*., County Court to have jurisdiction.*—Where it shall appear by affidavit of the person or some or one of the persons applying for probate or letters of administration that the testator or intestate had at the time of his death his fixed place of abode in one of the districts specified in schedule (A.) to this act, and that the personal estate in respect of which such probate or letters of administration should be granted under this act, exclusive of what the deceased shall have been possessed of or entitled to as a trustee, and not beneficially, but without deducting anything on account of the debts due and owing from the deceased, is under the value of two hundred pounds, and that the deceased at the time of his death was not seized or entitled beneficially of or to any real estate, or that the value of the real estate of or to which he was seized or entitled beneficially at the time of his death was under the value of three hundred pounds, the judge of the County Court having jurisdiction in the place in which it shall be sworn that the deceased had at the time of his death his fixed place of abode shall have the contentious jurisdiction and authority of the Court of Probate in respect of questions

as to the grant and revocation of probate of the will or letters of administration of the effects of such deceased person, in case there be any contention in relation thereto.

55. *Registrar of County Court to transmit certificate of decree for grant or revocation of probate.*—On a decree being made by a judge of a County Court for the grant or revocation of a probate or administration in any such cause, the registrar of the County Court shall transmit to the district registrar of the district in which it shall have been sworn that the deceased had at the time of his decease his fixed place of abode a certificate under the seal of the County Court of such decree having been made, and thereupon, on the application of the party or parties in favour of whom such decree shall have been made, a probate or administration in compliance with such decree shall be issued from such district registry; or, as the case may require, the probate or letters of administration theretofore granted shall be recalled or varied by the district registrar according to the effect of such decree.

56. *The judge of the County Court to decide causes and enforce judgments as in other cases.*—The judge of any County Court before whom any disputed question shall be raised relating to matters and causes testamentary under this act shall, subject to the rules and orders under this act, have all the jurisdiction, power, and authority to decide the same and enforce judgment therein, and to enforce orders in relation thereto, as if the same had been an ordinary action in the County Court.

57. *Affidavit of the facts giving the County Court jurisdiction to be conclusive, unless disproved while the matter is pending.*—The affidavit as to the place of abode and state of the property of a testator or intestate which is to give contentious jurisdiction to the judge of a County Court under the previous provisions shall, except as hereinafter provided, be conclusive for the purpose of authorizing the exercise of such jurisdiction, and the grant or revocation of probate or administration in compliance with the decree of such judge; and no such grant of probate or administration shall be liable to be recalled, revoked, or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the jurisdiction of such judge or within any of the said districts at the time of his death, or by reason that the personal estate sworn to be under the value of two hundred pounds did in fact amount to or exceed that value, or that the value of the real estate of or to which the deceased was seised or entitled beneficially at the time of his death amounted to or exceeded three hundred pounds: provided, that where it shall be shown to the judge of a County Court before whom any matter is pending under this act that the place of abode or state of the property of the testator or intestate in respect of whose will or estate he may have been applied to for grant or revocation of probate or administration has not been correctly stated in the affidavit, and if correctly stated would not have authorized him to exercise such contentious jurisdiction, he shall stay all further proceedings in his court in the matter, leaving any party to apply to the Court of Probate for such grant or revocation, and making such order as to the costs of the proceedings before him as he may think just.

58. *As to appeals from County Court.*—Any party who shall be dissatisfied with the determination of the judge of the County Court in point of law, or upon the admission or rejection of any evidence in any matter or cause under this act, may appeal from the same to the Court of Probate, in such manner and subject to such regulations as may be provided by the rules and orders to be made under this act, and the decision of the Court of Probate on such appeal shall be final.

59. *Not obligatory to apply for probate, &c., to district registries or County Court, but may in every case be made to Court of Probate.*—It shall not be obligatory on any person to apply for probate or administration to any district registry, or through any County Court, but in every case such application may be made through the principal registry of the Court of Probate, wherever the testator or intestate may at the time of his death have had his fixed place of abode : provided, that where in any contentious matter arising out of any such application it is shown to the Court of Probate that the state of the property and place of abode of the deceased were such as to give contentious jurisdiction to the judge of a County Court, the Court of Probate may send the cause to such County Court, and the judge thereof shall proceed therein as if such application and cause had been made to and arisen in his court in the first instance.

60. *Rules and orders for regulating the procedure of County Courts under the act to be made by the judges now having authority for the like purpose.*—For regulating the procedure and practice of the County Courts, and the judges, registrars, and officers thereof, in relation to their jurisdiction and proceedings under this act, rules and orders may be from time to time framed, amended, and certified by the County Court judges appointed for the time being to frame rules and orders for regulating the practice of the County Courts under the act of the session holden in the nineteenth and twentieth years of Her Majesty, chapter one hundred and eight, and shall be subject to be allowed or disallowed or altered, and shall be in force from the day named for that purpose by the Lord Chancellor, as in the said act is provided in relation to other rules and orders regulating the practice of the same courts ; and for establishing rules and orders to be in force when this act comes into operation, the power given by this enactment shall be exercised as soon as conveniently may be after the passing of this act.

61. *Where a will affecting real estate is proved in solemn form, or is the subject of a contentious proceeding, the heir and persons interested in the real estate to be cited.*—Where proceedings are taken under this act for proving a will in solemn form, or for revoking the probate of a will, on the ground of the invalidity thereof, or where in any other contentious cause or matter under this act the validity of a will is disputed, unless in the several cases aforesaid the will affects only personal estate, the heir-at-law, devisees and other persons having or pretending interest in the real estate affected by the will shall, subject to the provisions of this act, and to the rules and orders under this act, be cited to see proceedings, or otherwise summoned in like manner as the next of kin or others having or pretending interest in the personal

estate affected by a will should be cited or summoned, and may be permitted to become parties, or intervene for their respective interests in such real estate, subject to such rules and orders, and to the discretion of the court.

62. *Where the will is proved in solemn form, or its validity otherwise decided on, the decree of the court to be binding on the persons interested in the real estate.*—Where probate of such will is granted after such proof in solemn form, or where the validity of the will is otherwise declared by the decree or order in such contentious cause or matter as aforesaid, the probate, decree, or order respectively shall enure for the benefit of all persons interested in the real estate affected by such will, and the probate copy of such will, or the letters of administration with such will annexed, or a copy thereof respectively, stamped with the seal of Her Majesty's Court of Probate, shall in all courts, and in all suits and proceedings affecting real estate, of whatever tenure (save proceedings by way of appeal under this act, or for the revocation of such probate or administration), be received as conclusive evidence of the validity and contents of such will, in like manner as a probate is received in evidence in matters relating to the personal estate; and where probate is refused or revoked, on the ground of the invalidity of the will, or the invalidity of the will is otherwise declared by decree or order under this act, such decree or order shall enure for the benefit of the heir-at-law or other persons against whose interest in real estate such will might operate, and such will shall not be received in evidence in any suit or proceeding in relation to real estate, save in any proceeding by way of appeal from such decrees or orders.

63. *Heir in certain cases not to be cited, and where not cited not to be affected by probate.*—Nothing herein contained shall make it necessary to cite the heir-at-law or other persons having or pretending interest in the real estate of a deceased person, unless it is shown to the court and the court is satisfied that the deceased was at the time of his decease seized of or entitled to or had power to appoint by will some real estate beneficially, or in any case where the will propounded or of which the validity is in question would not in the opinion of the court, though established as to personality, affect real estate, but in every such case, and in any other case in which the court may, with reference to the circumstances of the property of the deceased or otherwise, think fit, the court may proceed without citing the heir or other persons interested in real estate; provided that the probate, decree, or order of the court shall not in any case affect the heir or any person in respect of his interest in real estate, unless such heir or person has been cited or made party to the proceedings, or derives title under or through a person so cited or made party.

64. *Probate or office copy to be evidence of the will in suits concerning real estate, save where the validity of the will is put in issue.*—In any action at law or suit in equity, where according to the existing law, it would be necessary to produce and prove an original will in order to establish a devise or other testamentary disposition of or affecting real estate, it shall be lawful for the party intending to establish in proof such devise or other testamentary disposition to give to the

opposite party, ten days at least before the trial or other proceeding in which the said proof shall be intended to be adduced, notice that he intends at the said trial or other proceeding to give in evidence as proof of the devise or other testamentary disposition the probate of the said will or the letters of administration with the will annexed, or a copy thereof stamped with any seal of the Court of Probate; and in every such case such probate or letters of administration, or copy thereof respectively, stamped as aforesaid, shall be sufficient evidence of such will and of its validity and contents, notwithstanding the same may not have been proved in solemn form, or have been otherwise declared valid in a contentious cause or matter, as herein provided, unless the party receiving such notice shall, within four days after such receipt, give notice that he disputes the validity of such devise or other testamentary disposition.

65. *As to costs of proof of will.*—In every case in which, in any such action or suit, the original will shall be produced and proved, it shall be lawful for the court or judge before whom such evidence shall be given to direct by which of the parties the costs thereof shall be paid.

66. *Place of deposit of original wills.*—There shall be one place of deposit under the control of the Court of Probate, at such place in London or Middlesex as Her Majesty may by order in council direct, in which all the original wills brought into the court or of which probate or administration with the will annexed is granted under this act in the principal registry thereof, and copies of all wills the originals whereof are to be preserved in the district registries, and such other documents as the court may direct, shall be deposited and preserved, and may be inspected under the control of the court and subject to the rules and orders under this act.

67. *Judge to cause calendars to be made from time to time in the principal registry, and to be printed.*—The judge shall cause to be made from time to time in the principal registry of the Court of Probate calendars of the grants of probate and administration in the principal registry, and in the several district registries of the court, for such periods as the judge may think fit, each such calendar to contain a note of every probate or administration with the will annexed granted within the period therein specified, and also a note of every other administration granted within the same period, such respective notes setting forth the dates of such grants, the registry in which the grants were made, the names of the testators and intestates, the place and time of death, the names and descriptions of the executors and administrators, and the value of the effects; and the calendars to be so made shall be printed as the same are from time to time completed.

68. *Registrar to transmit printed copies to certain offices.*—The registrars shall cause a printed copy of every calendar to be transmitted through the post or otherwise to each of the district registries, and to the office of Her Majesty's prerogative in Dublin, the office of the commissary of the county of Midlothian in Edinburgh, and such other offices, if any, as the Court of Probate shall from time to time by rule or order direct; and every printed copy of a calendar so transmitted as

aforsaid shall be kept in the registry or office to which it is transmitted, and may be inspected by any person on payment of a fee of one shilling for each search, without reference to the number of calendars inspected.

69. *Official copy of whole or part of will may be obtained.*—An official copy of the whole or any part of a will, or an official certificate of the grant of any letters of administration, may be obtained from the registry or district registry where the will has been proved or the administration granted, on the payment of such fees as shall be fixed for the same by the rules and orders under this act.

70. *Administration pendente lite.*—Pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling, or revoking any probate or any grant of administration, the Court of Probate may appoint an administrator of the personal estate of such deceased person; and the administrator so appointed shall have all the rights and powers of a general administrator, other than the right of distributing the residue of such personal estate; and every such administrator shall be subject to the immediate control of the court, and act under its direction.

71. *Receiver of real estate pendente lite.*—It shall be lawful for the Court of Probate to appoint any administrator appointed as aforesaid or any other person to be receiver of the real estate of any deceased person pending any suit in the court touching the validity of any will of such deceased person by which his real estate may be affected, and such receiver shall have such power to receive all rents and profits of such real estate, and such powers of letting and managing such real estate, as the court may direct.

72. *Remuneration to administrators pendente lite and receivers.*—The Court of Probate may direct that administrators and receivers appointed pending suits involving matters and causes testamentary shall receive out of the personal and real estate of the deceased such reasonable remuneration as the court think fit.

73. *Power as to appointment of administrator.*—Where a person has died or shall die wholly intestate as to his personal estate, or leaving a will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, or where the executor shall at the time of the death of such person be resident out of the United Kingdom of Great Britain and Ireland, and it shall appear to the court to be necessary or convenient in any such case, by reason of the insolvency of the estate of the deceased, or other special circumstances, to appoint some person to be the administrator of the personal estate of the deceased, or of any part of such personal estate, other than the person who if this act had not been passed would by law have been entitled to a grant of administration of such personal estate, it shall not be obligatory upon the court to grant administration of the personal estate of such deceased person to the person who if this act had not passed would by law have been entitled to a grant thereof, but it shall be lawful for the court, in its discretion, to appoint such person as the court shall think fit to be such administrator upon his giving such security (if any) as the court

shall direct, and every such administration may be limited as the court shall think fit.

74. *38 Geo. 3, c. 87, extended to administrators.*—The provisions of an act passed in the thirty-eighth year of his late Majesty King George the Third, chapter eighty-seven, shall apply (in like manner) to all cases where letters of administration have been granted, and the person to whom such administration shall have been granted shall be out of the jurisdiction of Her Majesty's courts of law and equity.

75. *After grant of administration no person to have power to sue as an executor.*—After any grant of administration, no person shall have power to sue or prosecute any suit, or otherwise act as executor of the deceased, as to the personal estate comprised in or affected by such grant of administration, until such administration shall have been recalled or revoked.

76. *Revocation of temporary grants not to prejudice actions or suits.*—Where before the revocation of any temporary administration any proceedings at law or in equity have been commenced by or against any administrator so appointed, the court in which such proceedings are pending may order that a suggestion be made upon the record of the revocation of such administration, and of the grant of probate or administration which shall have been made consequent thereupon, and that the proceedings shall be continued in the name of the new executor or administrator, in like manner as if the proceeding had been originally commenced by or against such new executor or administrator, but subject to such conditions and variations, if any, as such court may direct.

77. *Payments under revoked probates or administration to be valid.*—Where any probate or administration is revoked under this act, all payments *bond fide* made to any executor or administrator under such probate or administration, before the revocation thereof, shall be a legal discharge to the person making the same; and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him which the person to whom probate or administration shall be afterwards granted might have lawfully made.

78. *Persons, &c. making payment upon probates granted for estate of deceased person to be indemnified.*—All persons and corporations making or permitting to be made any payment or transfer *bond fide*, upon any probate or letters of administration granted in respect of the estate of any deceased person under the authority of this act, shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of such probate or letters of administration.

79. *Rights of an executor renouncing probate to cease as if he had not been named in the will.*—Where any person, after the commencement of this act, renounces probate of the will of which he is appointed executor or one of the executors, the rights of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall and may, without

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any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor.

80. *Sureties to administration bonds.*—So much of an act passed in the twenty-first year of King Henry the Eighth, chapter five, and of an act passed in the twenty-second and twenty-third years of King Charles the Second, chapter ten, and of an act passed in the first year of King James the Second, chapter seventeen, as requires any surety, bond, or other security to be taken from a person to whom administration shall be committed, shall be repealed.

81. *Persons to whom grant of administrations shall be committed shall give bond.*—Every person to whom any grant of administration shall be committed shall give bond to the judge of the Court of Probate to ensure for the benefit of the judge for the time being, and, if the Court of Probate or (in the case of a grant from the district registry) the district registrar shall require, with one or more surety or sureties, conditioned for duly collecting, getting in, and administering the personal estate of the deceased, which bond shall be in such form as the judge shall from time to time by any general or special order direct: provided that it shall not be necessary for the solicitor for the affairs of the treasury or the solicitor for the Duchy of Lancaster applying for or obtaining administration to the use or benefit of Her Majesty to give any such bond as aforesaid.

82. *Penalty on bond.*—Such bond shall be in a penalty of double the amount under which the estate and effects of the deceased shall be sworn, unless the court or district registrar, as the case may be, shall in any case think fit to direct the same to be reduced, in which case it shall be lawful for the court or district registrar so to do, and the court or district registrar may also direct that more bonds than one shall be given, so as to limit the liability of any surety to such amount as the court or district registrar shall think reasonable.

83. *Power of court to assign bond.*—The court may, on application made on motion or petition in a summary way, and on being satisfied that the condition of any such bond has been broken, order one of the registrars of the court to assign the same to some person, to be named in such order, and such person, his executors or administrators, shall thereupon be entitled to sue on the said bond, in his own name, both at law and in equity, as if the same had been originally given to him instead of to the judge of the court, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the said bond.

84. *Pending suits transferred to Court of Probate—Not to apply to appeals pending before Her Majesty in council.*—All suits, whether original or by way of appeal, which at the commencement of this act shall be pending in any court in England respecting any grant of probate or administration, shall be transferred, with all the proceedings therein, to the Court of Probate, there to be dealt with and decided according to the rules and practice of the said court, except so far as such court may think it expedient to adopt, for the purposes of such transferred suits or any of them, the rules or practice of the court in which the same shall have been pending, to which end the Court of Probate shall,

for the purposes of such suits, have all the jurisdiction, power, and authority possessed by the court from which such suit shall be transferred; but this enactment shall not apply to proceedings by way of appeal pending before Her Majesty in council, which proceedings shall be carried on and prosecuted in the same manner in all respects as if this act had not passed; and every person who if this act had not passed might have appealed to Her Majesty in council against any proceeding, decree, or sentence of any court respecting the grant of any probate or administration, may, notwithstanding this act, appeal to Her Majesty in council against such proceeding, decree, or sentence: provided also, that Her Majesty in council may remit to the Court of Probate any cause or proceeding pending by way of appeal as aforesaid, or to be brought before Her Majesty in council upon appeal as aforesaid, with such directions as the justice of the case may require.

85. *Power to judges whose jurisdiction is determined to deliver written judgments.*—Provided, that if at the commencement of this act any cause which would be transferred to the Court of Probate under the enactment hereinbefore contained shall have been heard before any judge having jurisdiction in relation to such cause before the commencement of this act, and shall be standing for judgment, such judge may, at any time within six weeks after the commencement of this act, give in to one of the registrars of the court a written judgment thereon, signed by him, and a decree or order, as the case may require, shall be drawn up in pursuance of such judgment; and every such decree or order shall have the same force and effect as if it had been drawn up in pursuance of a judgment of the Court of Probate on the day on which the same shall so be delivered to the registrar, and shall be subject to appeal under this act.

86. *Void and voidable probates and administrations.*—All grants of probates and administrations made before the commencement of this act, which may be void or voidable by reason only that the courts from which respectively the same were obtained had not jurisdiction to make such grants, shall be as valid as if the same had been obtained from courts entitled to make such grants; provided, that any such grants of probate or administration shall not be made valid by this act when the same shall before the commencement of this act have been revoked or determined by any court of competent jurisdiction to have been void; nor shall this act prejudice or affect any proceedings pending at the time of the passing of this act in which the validity of any such probate or administration shall be in question: if the result of such proceeding shall be to invalidate the same, such probate or administration shall not be rendered valid by this act; and if such proceedings abate or become defective by reason of the death of any party, any person who but for this act would have any right by reason of the invalidity of such probate or administration shall retain such right, and may commence proceedings for enforcing the same within six calendar months after the death of such party.

87. *Probates and administrations granted before this act comes into operation.*—Legal grants of probate and administration made before the commencement of this act, and grants of probate and administration

made legal by this act, shall have the same force and effect as if they had been granted under this act, but in every such case there shall be due and payable to Her Majesty such further stamp duty, if any, as would have been chargeable on any probate or administration which but for this act would or ought to have been obtained in respect of the personal estate not covered by the grant; and all inventories and accounts in respect thereof shall be returnable to the Court of Chancery, and all bonds taken in respect thereof may be enforced by or under the authority of the Court of Chancery, at the discretion of the court.

88. *Probate or administration may be granted of personal estate not affected by the former grants.*—Provided that where any probate or administration has been granted before the commencement of this act, and the deceased and personal estate in England, not within the limits of the jurisdiction of the court by which the probate or administration was granted, or otherwise not within the operation of the grant, it shall be lawful for the Court of Probate to grant probate or administration only in respect of such personal estate not covered by any former probate or administration, and such grant may be limited accordingly.

89. *Judges of present ecclesiastical courts and others to transmit all wills, &c. to the registry.*—The acting judge and registrar of every court, and other person now having jurisdiction to grant probate or administration, and every person having the custody of the documents and papers of or belonging to such court or person, shall, upon receiving a requisition for that purpose, under the seal of the Court of Probate, from a registrar, and at the time and in the manner mentioned in such requisition, transmit to the Court of Probate, or to such other place as in such requisition shall be specified, all records, wills, grants, probates, letters of administration, administration bonds, notes of administration, court books, calendars, deeds, processes, acts, proceedings, writs, documents, and every other instrument relating exclusively or principally to matters or causes testamentary, to be deposited and arranged in the registry of each district or in the principal registry, as the case may require, so as to be easy of reference, under the control and direction of the court.

90. *Penalty for default.*—No judge, registrar, or other person who shall wilfully refuse or neglect so to transmit such records, wills, grants, probates, letters of administration, administration bonds, notes of administration, court books, calendars, deeds, processes, acts, proceedings, writs, documents, or any other instrument relating to matters or causes testamentary, shall be entitled to any compensation under this act, and every judge, registrar, or other person so refusing or neglecting shall be liable to a penalty of one hundred pounds, to be sued for and recovered, together with full costs of suit, in any of Her Majesty's superior courts, by the registrars.

91. *As to depositories for safe custody of the wills of living persons.*—One or more safe and convenient depository or depositories shall be provided, under the control and directions of the Court of Probate, for all such wills of living persons as shall be deposited therein for safe custody; and all persons may deposit their wills in such depo-

itory upon payment of such fees and under such regulations as the judge shall from time to time by any order direct.

92. *This act not to affect the stamp duties on probates and administrations.*—Nothing in this act contained shall affect the stamp duties now by law payable upon probates and administrations; and all the clauses, provisions, rules, regulations, and directions contained in any act of Parliament relating to the said duties, and to wills, probates of wills, and letters of administration, for securing the said duties, not superseded by or inconsistent with the express provisions of this act, shall be in full force, and shall be observed, applied, and put in execution for securing the duties payable on probates of wills and letters of administration granted under this act, as if such duties had been granted by this act, and the said clauses, provisions, rules, and regulations relating thereto were herein repeated and specially enacted.

93. *The registrars to deliver copies of wills, &c. to the Commissioners of Inland Revenue.*—The registrars of the Court of Probate shall, within such period as the judge shall direct after probate of any will or letters of administration shall have been granted, deliver or cause to be delivered to the Commissioners of Inland Revenue, or their proper officer, the following documents respectively; that is to say, in the case of a probate or administration with a will annexed a copy of the will and the original affidavit, and in the case of letters of administration without a will annexed such original affidavit, and in every case of letters of administration a copy or extract thereof, and in every case such certificate or note of the grant as the said commissioners may require.

94. *Sections 8 & 9 of 53 Geo. 3, c. 127, repealed in part as to the Court of Probate.*—Whereas by an act passed in the fifty-third year of King George the Third, chapter one hundred and twenty-seven, it is enacted, that if any proctor of any ecclesiastical court shall act as such, or permit his name to be used in any suit, appertaining to the office of a proctor, or in obtaining probates of wills or letters of administration, for or on account or for the profit or benefit of any person not entitled to act as a proctor, or shall permit any such person to participate in such profit or benefit, such proctor shall be subject to certain penalties therein mentioned; and it is also therein further enacted, that if any person shall, in his own name, or in that of any other person, do or perform any act whatever belonging to the office of a proctor in consideration of any gain, fee or reward, or with a view to participate in the benefit to be derived from the office, functions, or practice of a proctor, without being admitted and enrolled, every such person shall be subject to certain other penalties therein mentioned: be it enacted, nothing in the said act contained shall prevent any proctor of the Court of Probate from acting as agent of any attorney or solicitor in relation to any matter testamentary, or from allowing him to participate in the profits of and incident thereto.

95. *Fees to be taken by officers of court and by officers of County Courts.*—The Lord Chancellor, with such assistance as is hereinbefore provided as to rules and orders to be made in pursuance of this act, shall, as soon as conveniently may be after the passing of this act, fix

a table or tables of fees to be taken by the officers of the Court of Probate, and the proctors, solicitors, and attorneys practising therein, including the district registrars, and the proctors, solicitors, and attorneys practising in district registries, and of fees to be taken by the officers of the County Courts, in respect of business under this act, and of fees to be payable in respect of searches, inspection, and printed and other copies of and extracts from records, wills, and other documents in the custody or under the control of the Court of Probate, and the judge of the Court of Probate, with such concurrence as is hereinbefore provided in respect of the amendment of rules and orders, is hereby empowered, from time to time after this act shall come into operation, to add to, reduce, alter, or amend such table or tables of fees, as he may see fit: provided that such tables of fees and every alteration of the same, except so far as respects the fees which are to be taken by district registrars, proctors, and others, for their own remuneration and to their own use, shall be subject to the approval of the commissioners of Her Majesty's Treasury; and every such table of fees, and every addition, reduction, alteration, or amendment to, in, or of the same, shall be published in the *London Gazette*; and no other fees than those specified and allowed in such table of fees shall be demanded or taken by such officers, and proctors, solicitors, and attorneys.

96. *Taxation of costs.*—The bill of any proctor, attorney, or solicitor, for any fees, charges, or disbursements in respect of any business transacted in the Court of Probate, whether contentions or otherwise, or any matters connected therewith, shall, as well between proctor or attorney or solicitor and client as between party and party, be subject to taxation by any one of the registrars of the said court, and the mode in which any such bill shall be referred for taxation, and by whom the costs of taxation shall be paid, shall be regulated by the rules and orders to be made under this act, and the certificate of the registrar of the amount at which such bill is taxed shall be subject to appeal to the judge of the said court.

97. *Fees not to be paid in money, but by stamps.*—None of the fees payable to the officers of the Court of Probate, or of any County Court, in respect of business under this act, except the fees of the district registrars (which are to be taken as their remuneration, and for their own use), the fees of proctors, solicitors, and attorneys, and such fees as may be authorized to be taken for their own use by surrogates and commissioners for administering oaths, shall be received in money, but every such fee shall be collected and received by a stamp denoting the amount of the fee which otherwise would be payable.

98. *Provisions of acts relating to stamps to be applicable to stamps for collecting fees.*—The fees to be collected by means of stamps under the provisions of this act shall be deemed "stamp duties," and shall be placed under the management of the commissioners of Inland Revenue, to be collected and paid into the Exchequer under the same laws and regulations as those made in respect of the other duties of "stamps," and the provisions in the several acts for the time being in force relating to stamps under the care or management of the commissioners of Inland Revenue shall in all cases not hereby expressly

provided for be of full force and effect with respect to the stamps to be provided under or by virtue of this act, and to the vellum, parchment, or paper on or to which the same stamps shall be impressed or affixed, and be applied and put in execution for collecting and securing the sums of money denoted thereby, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually to all intents and purposes as if such provisions had been herein repeated and specially enacted with reference to the said last-mentioned stamps and sums of money respectively; but a separate and distinct account of all money received in respect of the said last-mentioned stamps for every year ending the thirty-first day of March shall be laid before both houses of Parliament within one month after the termination of such year of accounts, or, if Parliament be not then sitting, within one month after the commencement of the next session of Parliament.

99. *No document to be received or used unless stamped.*—No document which under this act, and any table of fees for the time being in force under this act, ought to have a stamp in respect of such fee impressed thereon or affixed thereto, shall be received or filed or be used in relation to any proceeding in the Court of Probate, or be of any validity for any purpose whatsoever, unless or until the same shall have the proper stamp impressed thereon or affixed thereto: provided that if any time it shall appear that any such document has through mistake or inadvertence been received, or filed, or used without having such stamp impressed thereon or affixed thereto, it shall be lawful for the judge of the Court of Probate, if he think fit, to order that such stamp shall be impressed thereon or affixed thereto, and thereupon, when a stamp shall have been impressed on such document or affixed thereto in compliance with any such order, such document and every proceeding in reference thereto shall be as valid and effectual as if such stamp had been impressed thereon or affixed thereto in the first instance.

100. *Officers of the court may be dismissed for fraud or wilful neglect in relation to stamps.*—If any officer of the Court of Probate, or any other person employed under this act, shall do or commit or connive at any fraudulent act or practice in relation to any stamp to be used under the provisions of this act, or to any fee or sum of money to be collected, or which ought to be collected, by means of any such stamp, or if any such officer or person shall be guilty of any wilful act, neglect, or omission whereby any fee or money which ought to be collected by means of a stamp under this act shall be lost, or the payment thereof evaded, every such officer or person so offending shall be dismissed from his office or employment if the judge of the Court of Probate shall think fit so to order.

101. *Salary of judge and compensations to be charged on Consolidated Fund.*—The salary of the judge of the Court of Probate, and any retiring annuity granted to a judge of the Court of Probate under this act, and all compensations payable under this act, shall be charged on and payable out of the Consolidated Fund of the United Kingdom.

102. *Salaries and expenses not charged on the Consolidated Fund*

to be paid out of moneys to be provided by Parliament.—It shall be lawful for the commissioners of Her Majesty's Treasury, out of such moneys as may be provided and appropriated by Parliament for the purpose, to cause to be paid all salaries payable to the registrars, clerks, and other officers under this act, and all necessary expenses of the Court of Probate and its registries, and other expenses which may be incurred in carrying the provisions of this act into effect (except such salary, retiring annuity, and compensations as are hereinbefore charged on the said Consolidated Fund.)

103. *Compensation to registrars, &c. of existing courts.*—It shall be lawful for the commissioners of the Treasury to grant to any archdeacons, judges, deputy judges, registrars, deputy registrars, and other persons holding office in the courts now exercising jurisdiction in matters and causes testamentary who may sustain any loss of emoluments by reason of the passing of this act, and who are not transferred or appointed by or under this act to offices of equal value in the Court of Probate, such compensation as, having regard to the tenure of their respective offices and appointments, and to the provisions of the act of the session holden in the sixth and seventh years of King William the Fourth, chapter seventy-seven, section twenty-five, and of the act of the session holden in the tenth and eleventh years of Her Majesty, chapter ninety-eight, section nine, and the several subsequent acts continuing the provisions of the said acts respectively, the said commissioners deem just and proper to be awarded: provided that where persons whose claims in respect of offices, held for life or otherwise, are excluded by the said provisions, have executed in person the duties of such offices, the said provisions shall not be deemed to prevent the said commissioners from granting to such persons such compensation as the said commissioners would deem just and proper to be awarded on the abolition or reduction of the emoluments of like offices, if held at the pleasure of the Crown; and it shall be lawful for the said commissioners to grant to all managing and other clerks who have been continuously employed in the offices of registrars of the said courts for fifteen years and upwards immediately before the passing of this act, and may sustain any loss of emoluments as aforesaid, and are not transferred or appointed as aforesaid, such compensation as the said commissioners may deem just and proper: provided always, that if any person to whom any yearly sum is awarded for compensation as aforesaid is or shall be appointed to any office or situation under this act, or in the public service, the payment of such compensation shall be suspended so long as he continues to receive the salary or emoluments of such office or situation, if the amount thereof be equal to or greater than the amount of emoluments in respect of the loss whereof compensation is awarded; and if the amount of such last-mentioned emoluments be greater than the salary or emoluments of such office or situation, no more of such compensation shall be paid than will, with such salary or emoluments, be equal to the emoluments in respect of the loss whereof such compensation is payable.

104. *Persons receiving compensation to continue to discharge the remaining duties of their offices.*—Any person to whom compensation

is awarded under this act in respect of the loss of emoluments of any office, and who at the passing of this act shall have been discharging or liable to discharge in respect of such office duties other than those in matters and causes testamentary, shall, so long as he shall receive such compensation, be bound to discharge such other duties on the same terms on which, whether gratuitously or otherwise, he discharged or was liable to discharge the same before the passing of this act.

105. *Compensation to proctors.*—Whereas the fees or emoluments of the persons now practising as proctors in the courts now exercising jurisdiction in matters and causes testamentary may be damaged by the abolition of the exclusive rights and privileges which they have hitherto enjoyed as such proctors in such courts; be it enacted, that the commissioners of Her Majesty's Treasury, by examination on oath or otherwise, which oath they are hereby authorized to administer, may inquire into and may, by the production of such evidence as they shall think fit to require, ascertain and absolutely determine the net annual amount of the profits arising from the transaction of business by proctors in matters and causes testamentary, on an average of five years immediately preceding the commencement of this act, or of such proportion of five years as shall have elapsed since each and every such proctor was admitted to practise in such courts, and shall award to each and every such proctor a sum of money or annual payment during the term of his natural life of such amount as shall be equal in value to one half of the net profits derived by such proctor in respect of matters and causes testamentary upon the said average of five years immediately preceding the commencement of this act, or of such proportion of the said five years as shall have elapsed since the admission of each and every such proctor to practise in the courts now exercising jurisdiction in matters and causes testamentary.

106. *Compensation to proctors in partnership.*—And whereas divers proctors practising in the courts now exercising jurisdiction in matters and causes testamentary now are or may at the commencement of this act be associated together in partnership: be it therefore enacted, that in all such cases the commissioners of Her Majesty's Treasury shall inquire into and ascertain the terms or conditions of such partnerships, and shall absolutely determine and award compensation in respect thereof as hereinbefore provided to each of such partnerships, in like manner as if all the emoluments thereof had been derived by one individual, and shall apportion such compensation among the members of each such partnership, with or without benefit of survivorship, regard being had to the existing terms and conditions of the same.

107. *For the protection of the interests of Viscount Canterbury.*—2 & 3 Will. 4, c. 109.—And whereas the Most Reverend Charles late Archbishop of Canterbury, by virtue of the power given by an act of the ninth year of King George the Fourth, "to authorize the Lord Archbishop of Canterbury for the time being to appoint a person or persons to the office of registrar of his prerogative, without a previous surrender of the existing grant or grants of the said office," did, by letters patent under his archiepiscopal seal, dated the twenty-first day of June, one thousand eight hundred and twenty-eight, with the

confirmation of the Dean and Chapter of the Cathedral and Metropolitan Church of Christ, Canterbury, grant the said office of registrar of his prerogative to the Right Honourable Charles Manners Sutton, now Viscount Canterbury, then Charles Manners Sutton, Esquire, the eldest son and next heir male of the Right Honourable Charles Manners Sutton, late Viscount Canterbury, for his life, subject and without prejudice to the estates and interests, rights and privileges, of the Reverend George Moore and Robert Moore (who then held the said office by virtue of such grant as therein mentioned), and the survivor of them: and whereas by an act passed in the session of Parliament held in the second and third years of the reign of his late Majesty King William the Fourth, intituled "An Act for settling and securing Annuities on the Right Honourable Charles Manners Sutton and on his next Heir Male, in consideration of the eminent Services of the said Right Honourable Charles Manners Sutton," it was enacted, that an annuity of four thousand pounds should be payable out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland to the said Right Honourable Charles Manners Sutton, late Viscount Canterbury, during his life, and that after the decease of the said Charles, late Viscount Canterbury, one annuity of three thousand pounds be payable out of the said Consolidated Fund to the then heir male of the body of the said Charles, late Viscount Canterbury, during the natural life of such heir male; and it was further enacted, that, in the event of the said Charles, now Viscount Canterbury, having succeeded to and being in the possession of the said annuity of three thousand pounds, and afterwards becoming entitled to the full possession of the said office of registrar of the prerogative of the Lord Archbishop of Canterbury, and to the fees, perquisites, profits, and emoluments thereof (provided the same should exceed the annual sum of three thousand pounds), then and in either of the cases aforesaid the said annuity of three thousand pounds should cease and determine and be no longer payable to the said Charles, now Viscount Canterbury: provided nevertheless, that if the said fees, perquisites, profits, and emoluments of the said office of registrar should not produce the net annual sum of three thousand pounds to the said Charles, now Viscount Canterbury, then there should be issued and paid out of the said Consolidated Fund such a sum of money annually as, together with the said fees, perquisites, profits, and emoluments, would make a clear annual income to the said Charles, now Viscount Canterbury, of three thousand pounds: and whereas the said Charles, now Viscount Canterbury, upon the decease of the said Charles, late Viscount Canterbury, succeeded to and is now in possession of the annuity of three thousand pounds, but he is not yet in possession of the said office of registrar: there shall be awarded to the said Charles, now Viscount Canterbury, as a compensation for the fees, perquisites, profits, and emoluments of the said office of registrar of the prerogative of the Lord Archbishop of Canterbury, an annuity to be calculated upon the average yearly net receipts of the legal fees, perquisites, profits, and emoluments of the said office during such period next preceding the time when this act shall come into operation as the commissioners of Her Majesty's Treasury shall think proper; and such

annuity shall commence from the time of this act coming into operation, if the said Charles, Viscount Canterbury, shall then be in possession of the said office, and if not, then from the time at which the said Charles, Viscount Canterbury, would have become entitled, but for the passing of this act, to the full possession of the said office, and to the receipt of the fees, perquisites, profits, and emoluments thereof, and shall be paid to the said Charles, Viscount Canterbury, thenceforth during his life; provided that if the said annuity by way of compensation shall exceed the annual sum of three thousand pounds, then the said annuity of three thousand pounds payable under the last-recited act to the said Charles, Viscount Canterbury, shall, from and after the commencement of the said annuity by way of compensation, cease and determine, and shall not be payable to the said Charles, Viscount Canterbury; and in case the annuity awarded by way of compensation shall be less than the net annual sum of three thousand pounds, the provision contained in the said recited act passed in the session of Parliament held in the second and third years of his late Majesty King William the Fourth, for the payment unto the heir male of the body of the said Charles Viscount Canterbury, out of the said Consolidated Fund, of such a sum of money annually as, together with the said fees, perquisites, profits, and emoluments, would make up a clear income to him of three thousand pounds, shall, from and after the commencement of the said annuity by way of compensation, be applicable to and be in force for the purpose of making up, together with the said annuity so to be awarded in lieu of such fees, perquisites, profits, and emoluments as aforesaid, a clear annual income of three thousand pounds to the said Charles, now Viscount Canterbury, during his life.

108. *The registry of Prerogative Court of Canterbury to vest in registrars of the court.*—All the claim, title, and interest which at the time of the passing of this act the Reverend Robert Moore, clerk, has or is entitled to in or in respect of the building at present used as the public registry of the Prerogative Court, shall at the time appointed for the commencement of this act vest in the registrars for the time being of the court, subject to the payment of such rents, and the performance and fulfilment of such contracts in respect thereof, as the said Robert Moore, his executors or administrators, shall be subject to at the time of such vesting.

109. *Compensation to Sir John Dodson in case he be not appointed judge of the Court of Probate.*—In case Sir John Dodson, the present judge of the Prerogative Court of Canterbury and dean of the Court of Arches, be not appointed the first judge of the Court of Probate, there shall be paid to him during his natural life, as well by way of retiring pension as of salary as dean of the Court of Arches, the net yearly sum of two thousand pounds, to commence from the time appointed for the coming into operation of this act, and to be paid out of the fund and in manner herein provided for the payment of compensations.

110. *Establishments in district registries.*—There shall be a clerk or so many clerks in each district registry, and there shall be paid to such clerk or clerks such salary or respective salaries, as the judge of the court, with the sanction of the commissioners of Her Majesty's

Treasury, may from time to time think fit to direct; and it shall be lawful for such judge to prescribe from time to time the qualifications which shall be possessed by persons appointed to be clerks in such district registries, and generally to regulate the establishment of such district registries with reference to the duties to be performed therein; and the clerk or clerks in each district registry shall be appointed by the district registrar, with the approval of the judge; and every such clerk may be removed by such judge, or by the district registrar with the approval of the judge.

111. *Fees payable to district registrars*.—*District registrars may be paid by salaries instead of fees.*—Each district registrar shall, out of the fees taken by him in respect of the business in his respective district registry, pay the salary or salaries of the clerk or clerks in such registry, and the residue of such fees shall be retained by such district registrar to his own use; and every district registrar shall keep an account of all fees so taken by him as aforesaid, and shall within one month after the end of each year render to the commissioners of Her Majesty's Treasury a faithful account in writing of all such fees received by him during such year: provided that it shall be lawful for the commissioners of Her Majesty's Treasury, at any time after the commencement of this act, to order that the district registrars under this act or any of them, shall be paid by salaries instead of fees, and to fix the salaries to be payable to them respectively; and thereupon all fees payable to the district registrars so ordered to be paid by salaries shall be accounted for and paid into the Exchequer at such times and under such regulations as the commissioners of Her Majesty's Treasury shall direct, and shall be carried to and form part of the Consolidated Fund of the United Kingdom, and the salaries of such district registrars and of their clerks shall be paid out of such moneys as shall be provided by Parliament for that purpose, and no such district registrar shall be deemed to have any claim to compensation on account of any diminution of his emoluments by reason of any such order.

112. *Compensation to clerical surrogates, &c.*—It shall be lawful for the commissioners of the Treasury to grant to every clerical surrogate or other clerical person who, at the time of the passing of this act, shall have been appointed surrogate in either of the provinces of Canterbury or York, such compensation for any loss the said surrogates or persons may sustain by the passing of this act as the said commissioners deem just and proper to be awarded; the said commissioners having regard in awarding such compensation to the circumstance of the said clerical surrogates not being able to follow any other professional employment in lieu of the said office of surrogate.

113. *Persons receiving compensation to be liable to be called upon to fill offices, &c.*—That every person to whom any compensation shall be granted under this act shall at all times when called upon be liable to fill any public office or situation in England under the Crown for which his previous services in any office abolished by this act may render him eligible; and that if he shall decline when called upon so to do to take upon himself such office or situation, and execute the duties thereof satisfactorily, being in a competent state of health, he shall

forfeit his right to any compensation or allowances which may have been granted to him in respect of such previous services.

114. *Publication of accounts.*—The commissioners of Her Majesty's Treasury shall cause to be prepared in each year ending December thirty-one a return of all fees and moneys levied in such year under the authority of this act; also a return of the annual salaries of the judge of the said Court of Probate, and of the registrars, deputy registrars, clerks, and all others holding offices either in London or in the country districts, with an account of all the incidental expenses relating to the offices aforesaid, whether such salaries and expenses be defrayed out of fees or out of any other moneys; also a return of all superannuations, pensions, annuities, retiring allowances and compensations made payable under this act in each year, stating the gross amount and the amount in detail of such charges: provided always, that all such returns aforesaid shall be presented to both Houses of Parliament on or before the thirty-first day of March in each year, if Parliament is then sitting, and if Parliament is not sitting, then such returns shall be presented within one month of the first meeting of Parliament after the thirty-first day of March in each year: provided also, that every district registrar shall keep an account of all fees so taken by him as aforesaid, and shall within one month after the end of each year render to the commissioners of Her Majesty's Treasury a faithful account in writing of all such fees received by him during such year.

115. *Judge if a privy councillor to be a member of Judicial Committee.*—The judge of the court if a privy councillor shall be a member of the Judicial Committee of the Privy Council.

116. *College of doctors of law may let, sell, &c. their real and personal estate, and lay out moneys in purchase of other estates, &c.*—And whereas, with reference to the abolition of the jurisdiction hereby abolished and otherwise, it is expedient to give, confirm, or extend certain powers to or of "The College of Doctors of Law exercent in the Ecclesiastical and Admiralty Courts," incorporated under that style and title by letters patent, dated the twenty-second day of June, in the eighth year of his late Majesty King George the Third: be it enacted, that it shall be lawful for the said college from time to time hereafter to let, sell, or exchange for other real or personal estate, or both, all or any part of the real and personal estate which shall for the time being belong to the said college, either directly or through the medium of any trustee or trustees, and to lay out the moneys to be received on any such sale or exchange, or otherwise, belonging to the said college as aforesaid, in the purchase of other real or personal estate, or both, but so that the said college shall not at any one time hold or enjoy real estate of a yearly value exceeding one thousand pounds in the whole, and to pay, apply, and dispose of the income of all the real and personal estate which shall for the time being belong to the said college as aforesaid to or for the benefit of such body or bodies politic or corporate, or person or persons, whether being or including, or not being or including, the said college, and all or any individual members or member thereof for the time being, and generally for such purposes and in such manner as the said college shall think fit; and further, to alien and

dispose of all or any part of such real and personal estate, and the proceeds of any sale thereof, either by way of donation, voluntary disposition, or otherwise, unto, between, or amongst any body or bodies politic or corporate, or any person or persons whatsoever, whether being or not being a member or members of the said college: provided always, that no donation or other voluntary disposition of the corpus, or any part of the corpus, of the real and personal estate of the said college to any person or persons being a member or members thereof at the time of such donation or other voluntary disposition shall be effectual without the previous consent thereto of a majority of the members of the said college present at any meeting of the college, and the receipt of the treasurer for the time being of the said college shall be an effectual discharge for all gross annual and other sums which shall for the time being belong or be payable to the said college.

117. *College may surrender their charter, and upon such surrender shall be dissolved.*—It shall be lawful for the said college at any time after a resolution to that effect shall have been come to at a meeting of the college, by a majority of the members present at such meeting, to surrender and yield up to Her Majesty, her heirs or successors, at such time as in such resolution shall be determined, the charter of incorporation of the said college, and all franchises and privileges thereby conferred, or which shall for the time being belong to the said college; and upon and by such surrender the said corporation shall be dissolved, and shall cease to exist, for all purposes whatsoever (except so far as its existence may be requisite for the saving of the rights of Her Majesty, her heirs and successors, and of all and every person and persons, body and bodies politic or corporate, whatsoever other than the said college), and all real and personal estate which at the time of such dissolution of the said college shall belong to the said college for its own use and benefit, either directly or through the medium of any trustee or trustees, shall thenceforth belong, for all the estate and interest therein which at the time of such dissolution belonged to the said college absolutely, to all the persons who at the time of such dissolution thereof shall be the president and fellows of the said college, in equal shares as tenants in common, to and for their own use and benefit respectively, but subject to any charges or incumbrances affecting the same at the time of such dissolution, and all real and personal estate of which the said college at the time of such dissolution thereof be seised or possessed, upon any trust or trusts, shall thereupon become vested in the four persons who at the time of such dissolution shall be the president and three senior fellows of the said college, as joint tenants, their heirs, executors, or administrators, according to the nature of the real and personal estates respectively, upon the trust or trusts affecting the same respectively.

118. *Treasury to provide the buildings for registries, &c.*—It shall be lawful for the commissioners of Her Majesty's Treasury, out of such moneys as may be provided and appropriated by Parliament for that purpose, to cause to be purchased, erected, hired, or otherwise provided such offices and buildings as may be suitable for the district registries and depository or depositories for wills, and such buildings, if any, as may be necessary for the court and principal registry, in addi-

tion to the building by this act vested in the said registrars, or after the determination of their interest in such building.

119. *Rules and orders to be laid before Parliament.*—All rules and orders to be made under this act concerning procedure and practice, and the table of fees to be fixed under this act, and all alterations thereof to be from time to time made, shall be laid before both Houses of Parliament within one month after the making thereof if Parliament be then sitting, or if Parliament be not then sitting, within one month after the commencement of the then next session of Parliament.

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SCHEDULE (A).

Districts and Places of District Registries throughout England and Wales.

Districts.	Place of District Registries.
County of Northumberland (a)	Newcastle-on-Tyne.
County of Durham	Durham.
Counties of Cumberland and Westmoreland	Carlisle.
West Riding of the County of York	Wakefield.
North Riding ditto	York.
East Riding ditto (b) including the City of York and Ainsty	
County of Lancaster, except the hundred of Salford and West Derby and the city of Manchester	Lancaster.
City of Manchester and hundred of Salford	Manchester.
Hundred of West Derby in Lancashire	Liverpool.
County of Chester (c)	Chester.
Counties of Carnarvon and Anglesea	Bangor.
Counties of Flint, Denbigh and Merioneth	St. Asaph.
County of Derby	Derby.
County of Nottingham (d)	Nottingham.
Counties of Leicester and Rutland	Leicester.
County of Lincoln (e)	Lincoln.
Counties of Salop and Montgomery	Shrewsbury.
Northern division of Northampton, and counties of Huntingdon and Cambridge (f)	Peterborough.
County of Norfolk (g)	Norwich.
Eastern Division of the County of Suffolk and north division of the county of Essex	Ipswich.

(a) Including the towns and counties of Newcastle-on-Tyne and Berwick-upon-Tweed.

(b) Including the town and county of Kingston-on-Hull.

(c) Including the City of Chester.

(d) Including the town of Nottingham.

(e) Including the city of Lincoln.

(f) Including the University of Cambridge.

(g) Including the city of Norwich.

Districts.	Place of District Registries.
Western division of the county of Suffolk . . .	Bury St. Edmunds.
County of Bedford and Southern division of North- amptonshire (h)	Northampton
County of Warwick (i)	Birmingham.
County of Stafford (k)	Lichfield.
Counties of Radnor, Brecknock, and Hereford . . .	Hereford.
Counties of Cardigan, Carmarthen (l) and Pem- broke (m) with the deaneries of East and West Gower in the county of Glamorgan	Carmarthen
Counties of Glamorgan (with the exception of the deaneries of East and West Gower) and Monmouth	Llandaff.
County of Worcester (n)	Worcester.
County of Gloucester (o) except the present Bristol County Court district	Gloucester.
Bristol and Bath present County Court districts . .	Bristol.
Counties of Oxford (p) Berks, Bucks	Oxford.
Eastern division of the county of Somerset, except the present Bath County Court district, and the part in Somersetshire of the present Bristol County Court district	Wells.
Western division of the county of Somerset . . .	Taunton.
County of Devon (q)	Exeter.
County of Cornwall	Bodmin.
County of Wilts	Salisbury.
County of Dorset (r)	Blandford.
County of Hants (s)	Winchester.
Eastern division of the county of Sussex (t) . . .	Lewes.
Western division of the county of Sussex . . .	Chichester.
East division of the county of Kent (u)	Canterbury.

(h) Including the town of Northampton.

(i) Including the city of Coventry.

(k) Including the city of Lichfield.

(l) Including the town of Carmarthen.

(m) Including the town of Haverfordwest.

(n) Including the city of Worcester.

(o) Including the city of Gloucester.

(p) Including the University of Oxford.

(q) Including the city of Exeter.

(r) Including the town of Poole.

(s) Including the town of Southampton and Isle of Wight.

(t) Including such of the Cinque Ports and their dependencies as
are locally situate in the county of Sussex.

(u) Including the City of Canterbury and such of the Cinque Ports
and their dependencies as are locally situate in the county of Kent.

The divisions of counties referred to in the Schedule are the divisions
of the same counties described for election purposes in the act of the

second and third years of King William the Fourth chapter sixty-four, and the cities and towns herein referred to are to be taken to include the counties of such cities and towns as are counties of themselves.

SCHEDULE (B.)

	Annual Salary.
The Three Registrars in London, each	£1,500
The Record Keepers, each	600
The Sealer	300

APPENDIX.



APPENDIX.

RULES AND ORDERS

FOR

HER MAJESTY'S COURT OF PROBATE,

Made under the Provisions of the "Act to amend the Law relating to Probates and Letters of Administration in England" (20 & 21 Vict. cap. 77), in respect of

CONTENTIOUS BUSINESS: (sect. 30.)

1. All proceedings in the Court of Probate or in the registries thereof in respect of business not included in the Act itself under the expression "common form business," except the warning of caveats, shall be deemed to be contentious business.

2. Executors or other parties who, previously to the passing of the Act, might prove wills in solemn form of law, shall be at liberty to prove wills under similar circumstances, and with the same privileges, liabilities and effect as heretofore.

3. Next of kin and others who, previous to the passing of the Act, had a right to put executors or other parties entitled to administration with the will annexed upon proof of the will in solemn form of law, shall continue to possess the same rights and privileges, and be subject to the same liabilities with respect to costs, as heretofore.

4. Parties who previously to the passing of the Act had a right to intervene in the cause shall continue to possess the same right, subject to the same limitations and the same rules with respect to costs as heretofore.

5. A caveat shall remain in force for the space of six months, and then expire and be of no effect, but may be renewed from time to time as heretofore. A caveat shall be warned at the place mentioned in it as the address of the person who entered it. It shall be sufficient for the warning of a caveat that one of the registrars send by the public post a warning

signed by himself, and directed to the person who entered it, at the address mentioned in it.

6. Upon a party appearing in answer to the warning of a caveat, the matter shall be entered as a cause in the court book, and the contentious business shall thereupon be held to commence.

7. Where a party proposes to prove a will or codicil in solemn form of law, and no caveat has been entered, or a caveat has been entered, and no appearance given to the warning thereof, the contentious business shall be held to commence with the extracting of a citation in the forms Nos. 3, 5, or in some similar form.

8. Citations to see proceedings may be extracted from the registry, on the application of any party to the cause. A form is given, No. 4. Before a party can proceed after the service of a citation, an appearance must have been previously entered by or on behalf of the party cited, or an affidavit of personal service must have been filed in the registry, or the order of the judge, founded on an affidavit, and giving leave to proceed, must have been obtained, and filed in the registry.

9. Every citation shall be written or printed on parchment, and the party taking out the same, or his proctor, solicitor or attorney, shall take it, together with a præcipe, a form of which is given, marked No. 6, to the registry, and there deposit the præcipe and get the citation signed and sealed. The address given in the præcipe must be within three miles of the General Post-office. Personal service of any citation shall be effected by leaving a copy of the citation with the party cited, and showing him the original, if required by him so to do.

10. The entry of the appearance of a party shall be accompanied by an address within three miles of the General Post-office.

11. It shall be sufficient to leave all pleadings and other proceedings not expressly requiring personal service under these rules and orders at the address furnished so as aforesaid by plaintiff and defendant respectively.

12. In case the party cited does not appear within the time limited in the citation, the plaintiff shall allege the default of appearance on the record, and the cause shall thereupon proceed in default.

13. The form to be used in entering an appearance is given, No. 7.

14. In case of proving a will in solemn form of law,

the plaintiff shall declare in the forms Nos. 8 and 9, or as near thereto as the circumstances of the case admit; and such declaration shall be delivered to the defendant, and a copy thereof filed in the registry upon one and the same day.

15. The declaration may be delivered to the defendant at any time after the defendant has entered an appearance. If the plaintiff do not deliver his declaration within one month after an appearance has been given, the defendant may apply to the judge in chambers to fix a time within which such declaration shall be delivered.

16. In case of proceedings in default, the plaintiff shall file his declaration in the registry within eight days from the last day allowed in the citation for the appearance of the defendant.

17. The defendant, if desirous of pleading, must deliver his plea to the plaintiff within eight days after the service of the declaration, and file a copy thereof in the registry on one and the same day, otherwise he will not be permitted to plead, except with the permission of the judge. Forms of pleas are given, Nos. 10 and 11.

18. If the plaintiff propound a will, and the defendant in his plea allege the existence of a will of later date, the plaintiff, as well as the defendant, may, with and subject to the permission of the judge, adduce proof on the trial of the validity of the will upon which he relies.

19. In testamentary causes, the several scripts of the testator, that is to say, wills, codicils, drafts of wills or codicils, or written instructions for the same, shall continue to be brought into the registry as heretofore. And for this purpose, every plaintiff shall at the time of filing the copy of his declaration in the registry file therewith an affidavit of scripts to the effect of form No. 12; and in like manner the defendant, upon filing the copy of his plea, shall file therewith a similar affidavit. The time for the filing of these affidavits of scripts may be varied by order of the judge, on the application of either party. Every script coming within the terms of the affidavit, and of which the deponent has any knowledge, is to be specified therein, and every script in the custody or under the control of the party making the affidavit is to be annexed thereto, and deposited therewith in the registry.

20. Either of the parties may give in such further pleading as he may be advised. If either party desire to amend his pleadings, he may do so by permissionⁿ

of the judge, and in such form and under such terms as the judge may approve. The form of the declaration and plea will, it is presumed, be a sufficient guide to practitioners as to the form of any further pleadings.

21. If the defendant or plaintiff shall be of opinion that the declaration or plea or subsequent pleading does not disclose sufficient to enable him to proceed with safety, he may apply to the judge to order the pleadings to be amended; and, if necessary, further application may be made to the judge thereon.

22. Within eight days after the delivery of the last pleading in the cause, the plaintiff is to deliver to the defendant the issue in the form No. 13, or in a form as near thereto as the circumstances of the case will admit.

23. The plaintiff, after delivery of the issue, shall give notice to the defendant that, after the expiration of eight clear days, he intends to apply to the court to try the question at issue before itself, either with or without a jury, or to direct an issue to be tried before a judge of assize, as the case may be; and if the plaintiff do not give such notice within sixteen days from the day on which the issue was delivered the defendant may give a similar notice to the plaintiff. A form of notice, No. 14, is subjoined.

24. A copy of every such notice shall be filed in the registry upon the day on which the same is served upon the opposite party in the cause.

25. In each case the judge shall direct, and, if necessary, after hearing the parties, in what mode the cause shall be tried.

26. After the direction of the judge has been obtained as to the mode in which the cause is to be heard, the plaintiff shall, within four clear days, deposit the record of the cause in the registry. The record is to conclude with a statement of the mode in which the judge has directed the cause to be tried, as in the form No. 15.

27. The plaintiff shall, on the day upon which he sets down the cause as ready for trial, give notice to each party for whom an appearance has been entered of his having done so; and if he delay setting down the cause as ready for trial for the space of one month after the court has directed the mode in which the question at issue shall be tried, the defendant may set the cause down as ready for trial, and give a similar notice to the plaintiff and the aforesaid other parties. A copy of every such notice shall be filed in the registry; and the cause, excepting the judge shall otherwise direct, shall come on in its turn.

28. In default of the appearance of the party cited, a record, in form No. 16, or as near thereto as can be, shall be filed in the registry.

29. Every subpoena shall be written or printed on parchment, and may include the names of any number of witnesses. The party, or his solicitor or attorney, shall take it, together with a *præcipe* (forms of which are given, marked 17, 18, 19 and 20), to the registry, and there get it signed and sealed, and there deposit the *præcipe*.

30. Either the plaintiff or defendant may call upon the other party, by notice in writing in the form annexed, No. 21, to admit any document, saving any just exceptions; and in case of refusal or neglect to admit the same, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be given except in cases where the omission to give the notice is, in the opinion of the registrar, a saving of expense.

31. Applications for the production of instruments purporting to be testamentary, and shown to be in the possession or under the control of any person or persons, as mentioned in the 26th section of the Act, may be made to the judge, on motion or petition, or by summons served on the opposite party in any suit, and upon motion and affidavit in cases where no suit is pending. Forms of subpoenas applicable to these cases are given, Nos. 22, 23, 24, and 25.

32. The hearing of the case shall be conducted in court, and the counsel shall address the court, subject to the same rules and regulations as now obtain in the courts of common law.

33. After the conclusion of the trial, the registrar shall enter on the record the finding of the jury, or the decision of the judge, in a form corresponding as near as may be with that given, Nos. 26 and 27, and shall sign the same.

34. Any person proceeding to prove a will in solemn form, or to revoke the probate of a will, may, if the will affects real estate, apply to the judge for an order authorising him to cite the heir or heirs-at-law or other person or persons pretending interest in such real estate; and the judge, on being satisfied by affidavit that the will in question does affect or purport to affect the real estate, shall make an order authorising the person applying to cite the heir or heirs-at-law or other such person or persons as aforesaid:

Provided always that the judge may make any special directions as to the persons to be cited which he may think the justice of the case requires.

35. An application for a new trial may be made to the Court of Probate in respect to causes tried before a jury within ten days from the day on which the cause was tried, or on the first sitting of the court after the cause has been tried.

36. An application for a rehearing of any case tried before the judge without a jury, and in which evidence is given *viva voce*, may be made within ten days from the day on which the same was heard, or at the first sitting of the court after the cause has been heard.

37. If the plaintiff or defendant in any cause, unless by leave of the judge previously obtained, fail to deliver the declaration, plea, or other pleading within the time specified in these rules, the other party in the cause shall not be compelled to receive the same, unless by direction of the judge. The expense of every such application to the judge shall fall on the party who has caused the delay.

38. Citations, notices, and other processes heretofore in use and still retained, are to be inserted in the *London Gazette*, and in such of the leading morning and evening papers, and such local papers as the judge may from time to time direct, instead of being served on the Royal Exchange.

39. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used in court, unless by leave of the judge.

40. In contentious business, inventories, and not merely declarations of the personal estate and effects of the deceased, are to be used, unless by order of the judge. The form of inventory is given, No. 28.

41. All notices required by these rules, or by the practice of the court, are to be in writing.

Interest Causes.

42. In interest causes, as heretofore, each party shall be at liberty to deny the interest of the other; and in such cases both parties may, with and subject to the permission of the judge, adduce proof on one and the same trial of their interest respectively.

43. In interest causes the pleading of each party must show on the face of it that no other person exists having an interest superior to that of the claimant.

44. Forms of the declaration and plea in an interest cause are given, No. 9, and No. 11.

Proceedings by Petition.

45. In proceedings by petition the plaintiff shall, within four clear days after an appearance has been entered for the defendant, or, when the defendant is already before the court, within four clear days from the day upon which he claims to be heard by petition, deliver his act to the defendant, and file a copy thereof in the registry upon one and the same day.

46. The defendant shall, within eight days after the delivery of the Act, deliver his answer to the plaintiff, and file a copy thereof in the registry upon one and the same day.

47. The same course shall be pursued until the petition is concluded.

48. Both plaintiff and defendant shall, within eight clear days from the day upon which the petition is concluded, file in the registry such affidavits as may be necessary in support of their several averments therein. A Form of Petition is given, No. 29.

Appeals.

49. No petition of appeal shall be lodged against any sentence of the Court of Probate, unless within a month of the delivery of the sentence appealed from, or within such other time as the judge shall direct, and unless notice of such appeal has been given to the opposite party in the cause, and filed in the registry.

50. Parties may proceed to carry into effect the decision of the Court of Probate, notwithstanding any such notice of appeal, unless the judge shall otherwise order.

51. After notice of appeal has been given, the judge of the Court of Probate may order the execution of his decree to be suspended, upon such terms as he sees fit.

52. The judge shall in every case in which a time is fixed by these rules for the performance of any act have power to extend the same to such time, and with such qualifications and restrictions, and on such terms, as to him may seem fit.

FORMS,

Which are to be followed as nearly as the circumstances of each case will allow.

No. 1.—*Caveat.*

In Her Majesty's Court of Probate. The Principal Registry.

Let nothing be done in the goods of *A. B.*, late of deceased, who died on the day of 18 at unknown to *C. D.* of having interest [*or to E. F.*, proctor, solicitor, or attorney of parties having interest.]

Dated this day of 18 .
(Signed) *C. D.* of [*or E. F.* of
the proctor, solicitor, or attorney of parties having interest.]

No. 2.—*Warning to Caveat.*

In Her Majesty's Court of Probate. The Principal Registry.

To *A. B.* of [*or to C. D.* of proctor, solicitor, or attorney of parties having interest.]

You are hereby warned, within six days after the service of this warning upon you, inclusive of the day of such service, to cause an appearance to be entered for you in the principal registry of the Court of Probate to the caveat entered by you in the goods of *E. F.*, late of deceased, who died at on the day of 18 , and to set forth your [*or your client's*] interest; and take notice that in default of your so doing the said court will proceed to do all such acts, matters, and things as shall be needful and necessary to be done in and about the premises.

(Signed) *X. Y.*, One of the registrars of Her Majesty's Court of Probate.

Indorsement to be made after service.

This warning was served by *I. K.* on *A. B.* [*or C. D.*] of the person named in the caveat entered in respect of the goods of the said deceased at on the day of 18 .

(Signed) *I. K.*
[*or The duplicate of this warning, signed by the said X. Y., was sent by the public post directed to the said A. B. [or C. D.] at on the day of 18 .* (Signed) *I. K.*]

No. 3.—*Citation.*

In Her Majesty's Court of Probate.
Victoria, by the grace of God of the United Kingdom

of Great Britain and Ireland Queen, defender of the Faith.

To , of , in the county of .
Whereas *A. B.* of , claiming to be the executor of *C. D.*, late of , deceased, who died on or about the day of 18 , at , intends to prove in solemn form of law as well the alleged last will and testament of the said deceased bearing date the day of , as also the [*first*] codicil thereto, bearing date the day of , [*and so on for any other codicils*]: now this is to command you, that within eight days after service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court of Probate in support of any interest you may have in the estate and effects of the said deceased: and take notice, that in default of your so doing the judge of our said court will proceed to hear the said will [*and codicils*] proved in solemn form of law and to pronounce sentence in regard to the validity of the same, your absence notwithstanding.

(Signed) *E. F.*, Registrar.

Indorsement to be made after service.

This citation was served by *G. H.* on the within-named of , at , on the day of , 18 . (Signed) *G. H.*

No. 4.—*Citation to see Proceedings.*

In Her Majesty's Court of Probate.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, defender of the Faith.

To of in the county of .

Whereas there is now depending in our Court of Probate a cause entitled *A. B. v. C. D.*, wherein the said *A. B.* is proceeding to prove in solemn form of law the alleged last will and testament with codicils, of *E. F.*, late of deceased, who died on or about the day of at .

And whereas it has been alleged that you are one of the next of kin [or interested under a former will of the deceased, or that you are a party entitled in distribution to the personal estate and effects of the deceased, or as the case may be]. This is to give you notice to appear in the said cause, either personally or by your proctor, solicitor, or attorney, should you think it for your interest so to do, at any time during the dependance of the said cause, and before final judgment shall be given therein: And take notice, that in default of your so doing the judge of our Court

of Probate will proceed to hear the said will [and codicils] proved in solemn form of law, and pronounce judgment in the said cause, your absence notwithstanding. (Signed) E. F., Registrar.

Indorsement to be made after service.

This citation was served by G. H. on of at
on the day of 18 .
(Signed) G. H.

No. 5.—*Citation to bring in Probate.*

In Her Majesty's Court of Probate.

Victoria; by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, defender of the Faith.

To of in the county of .

Whereas probate of the last will and testament [with codicils] of A. B., late of deceased, was on or about the day of 18 granted to you by our Court of Probate: and whereas C. D., one of the natural and lawful brothers and next of kin [or interested under a former will, or a party interested in distribution in the goods] of the said deceased, hath alleged that the said probate ought to be called in, revoked, and declared null and void in law: now this is to command you, that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the principal registry of our said court the aforesaid probate, and further do show cause (if you should think it for your interest so to do) why the same should not be revoked, and the said will [and codicils] pronounced to be null and invalid.

(Signed) E. F., Registrar.

Indorsement to be made after service.

This citation was served by G. H. on the within-
named of at on the day of
18 .
(Signed) G. H.

No. 6.—*Præcipe for Citation.*

In Her Majesty's Court of Probate.

Citation [or citation to see proceedings] for A. B. of against C. D., in a matter of proving in solemn form of law the last will and testament with codicils of E. F., late of , in the county of, &c., deceased [or generally describing the nature of the suit.]

P. A., proctor, solicitor or attorney
for [or A. B. in person.]

The day of , 18 .

No. 7.—*Entry of an Appearance.*

In Her Majesty's Court of Probate.

<p>A. B., plaintiff, against C. D., <i>or</i> against C. D. and another, <i>or</i> against C. D. and others.</p>	}	<p>The defendant, C. D., appears in person, <i>or</i> E. F., proctor, solicitor, <i>or</i> attorney for C. D., appears for the defendant. [Here insert the address required by rule No. 9.] Entered the day of , 18 .</p>
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No. 8.—*Declaration.*

In Her Majesty's Court of Probate.

The day of 18 .

A. B., by C. D., his proctor, solicitor, or attorney, says, that E. F., late of deceased, who died on or about the day of at made his last will and testament with codicils, bearing date, to wit, the said will on the day of 18 , the said first codicil on the day of 18 , [and so on for any other codicils,] and in the said will appointed the said A. B. sole executor [or as the case may be]; that the said will and codicils respectively, after having been reduced into writing, were signed by the said testator in the presence of two witnesses present at the same time, and who subscribed the same in the presence of the said testator, and whose names severally appear upon the said will and codicils; and that the said testator was at the time of the execution of the said will and codicils respectively, of perfect sound mind, memory and understanding.

(Notice where the Defendant appears.)

The defendant must plead hereto in eight days from the date hereof, otherwise the plaintiff will proceed to obtain probate of the said will [and codicils].

No. 9.—*Declaration in an Interest Cause.*

In Her Majesty's Court of Probate.

The day of 18 .

A. B. [or A. B. by C. D., his proctor, solicitor, or attorney] saith, that E. F., late of deceased, died on or about the day of 18 , at , at intestate, a widower, without child, parent, brother or sister, uncle or aunt, nephew or niece, leaving the said A. B. his lawful cousin-german and one of his next of kin [or as the case may be.]

(Notice.)

The defendant must plead hereto in eight days from the date hereof, otherwise the plaintiff will proceed to obtain letters of administration to the personal estate and effects of the said deceased.

No. 10.—*Plea.*

In Her Majesty's Court of Probate.

The day of 18 .

G. H. [or *G. H.* by *I. Z.*, his proctor, solicitor, or attorney,] saith, that the paper writing bearing date the day of 18 , and alleged by the plaintiff to be the last will and testament of *A. B.*, late of in the county of deceased [or the first or any other codicil thereto], was not executed according to the provisions of 1 Vict. cap. 26, [or that the deceased at the time the said alleged will [or alleged codicil] bears date, to wit, on the day of 18 , was not of sound mind, memory, and understanding], [or any other averment in accordance with the circumstances of the case].

No. 11.—*Plea in an Interest Cause.*

In Her Majesty's Court of Probate.

The day of 18 .

G. H. [or *G. H.* by *I. K.*, his proctor, solicitor, or attorney,] saith, that *A. B.*, the plaintiff, is not the lawful cousin-german of *E. F.*, who died on or about the day of 18 at the deceased in this cause. And further, that the said deceased died intestate, a widower, without child, parent, brother or sister, uncle or aunt, nephew or niece, or cousin-german, leaving him the said *G. H.* his lawful cousin-german once removed, and his only next of kin [or as the case may be].

No. 12.—*Affidavit of Scripts.*

In Her Majesty's Court of Probate.

A. B. v. C. D.

I, [*A. B.* or *C. D.*] of in the county of party in this cause, make oath and say, that no paper or parchment writing, being or purporting to be or having the form or effect of a will or codicil or other testamentary disposition of *E. F.*, late of in the county of , deceased, the deceased in this cause, has at any time, either before or since his death, come to the hands, possession, or knowledge of me, this deponent, save and except the true and

original last will and testament of the said deceased now remaining in the registry of this court, the said will bearing date the day of 18 [or as the case may be] also save and except [here add any other testamentary papers of which the deponent has any knowledge]. (Signed) A. B.

Sworn before me

[person authorized to administer oaths under the Act.]

N.B.—All papers answering the description in the affidavit which are in the possession or under the control of the party making the affidavit should be particularly described therein, and, if possible, brought into the registry annexed thereto.

No. 13.—*The Issue.*

In Her Majesty's Court of Probate.

The day of 18 .

A. B. v. C. D.

A. B., by P. Q., his proctor, solicitor, or attorney, [or in person,] did deliver, to wit, on the day of 18 to the said C. D., his declaration in the words and figures following:

[Here insert declaration at length.]

Whereupon the said C. D. did deliver, to wit, on the day of to the said A. B., his plea, in the words and figures following:

[Here insert plea at length.]

[Add any further pleadings.]

Therefore the plaintiff claimed that the cause should be tried as the court shall direct.

No. 14.—*Notice as to Mode of Trial.*

In Her Majesty's Court of Probate.

A. B. v. C. D.

To of .

Take notice, that after the expiration of eight clear days from the service hereof the [plaintiff or defendant] in this cause intends to apply to the court to try the question at issue before itself [or by a common or special jury before itself], [or to direct an issue to be tried before the judge of assize by a special or common jury at the next assizes to be holden in and for the county of], [or as the case may be].

Dated this day of 18 .

(Signed) A. B. or C. D.

or E. F. proctor, solicitor or attorney
for [A. B. or C. D.]

No. 15.—*Form of Record.*

In Her Majesty's Court of Probate.

The day of 18 .

A. B. v. C. D.

A. B., by *E. F.*, his proctor, solicitor, or attorney, [or in person,] having cited *C. D.* to appear in support of any interest he may have in the estate and effects of *G. H.* [or according to the terms of the citation], late of , deceased, who died on or about the day of 18 , at , the said *C. D.* appeared thereto personally [or by his proctor, solicitor, or attorney]: Whereupon *A. B.* to wit, on the day of 18 , did deliver his declaration to the said *C. D.*, in the words and figures following:

[Here insert Declaration at full length.]

Whereupon the said *C. D.* did deliver, to wit, on the day of to the said *A. B.*, his plea in the words and figures following:

[Here insert Plea at length.]

[Add any further pleadings.]

Whereupon the judge did order, as follows:

[Here set forth the order verbatim.]

No. 16.—*Form of Record in case of Party cited not appearing.*

In Her Majesty's Court of Probate.

The day of 18 .

A. B. v. C. D.

A. B., by *E. F.*, his proctor, solicitor or attorney, [or in person,] having cited *C. D.* to appear in support of any interest he may have in the estate and effects of *G. H.* [or according to the terms of the citation], late of deceased, who died on or about the day of 18 , at , the said *C. D.* did not appear personally or by his proctor, solicitor or attorney: whereupon, in default of the appearance of the said *E. F.*, *A. B.* did file his declaration in the registry in the words and figures following:

[Here insert Declaration at full length.]

Therefore *A. B.* claimed that the cause should be tried as the court shall direct:

Whereupon the judge did direct the said cause to be heard before himself [or as the case may be].

No. 17.—*Form of Subpoena ad testificandum.*

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, defender of

the Faith, to [*names of all witnesses included in the subpoena*], greeting. We command you and every of you, that, all other things set aside, and ceasing every excuse, you and every of you be and appear in your proper persons before [*insert the name of the judge*], judge of our Court of Probate at our Court of Probate at on the day of of the clock in the forenoon of the same day, and so from day to day until the cause or proceeding is tried, to testify the truth according to your knowledge in a certain cause now in our court before our said judge depending, between plaintiff and defendant [*or in a certain cause or proceeding now in our court before our said judge depending, in default of the appearance of parties cited, entitled*], on the part of the [*plaintiff, defendant, or as the case may be*], and at the aforesaid day, between the parties aforesaid, to be tried [*or in default aforesaid, between the parties aforesaid, to be tried*]; and this you nor any of you shall in no wise omit, under the penalty of every of you of 100*l.* Witness [*insert the name of the judge*], at the Court of Probate, the day of in the year of our reign.
(Signed)

No. 18.—*Subpoena duces tecum.*

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, defender of the Faith, to [*names of all parties included in the subpoena*], greeting. We command you and every of you, that, all other things set aside, and ceasing every excuse, you and every of you be and appear in your proper persons before [*insert the name of the judge*] judge of our Court of Probate at on the day of by of the clock in the forenoon of the same day, and so from day to day until the cause or proceeding is heard, and also that you bring with you, and produce at the time and place aforesaid [*here describe shortly the deeds, letters, papers, &c. required to be produced*], then and there to testify and show all and singular those things which you or either of you know, or the said deed or instrument doth import of and concerning a certain cause or proceeding now in our said court before our said judge depending, between plaintiff and defendant, [*or a certain cause or proceeding now in our said court before our said judge depending, in default of the appearance of parties cited, and entitled*], on the part of the [*plaintiff or defendant, or as the case may be*], and at the aforesaid day between the parties aforesaid to be tried. And this

you nor any of you shall in nowise omit, under the penalty of every of you of 100*l*. Witness [*insert the name of the judge*], at the Court of Probate, the day of in the year of our reign.

(Signed) *E. F.*, Registrar.

No 19.—*Præcipe for Subpœna ad testificandum.*

In Her Majesty's Court of Probate

Subpœna of *W. W.*, *T. W.*, *S. W.*, *G. W.* and *F. W.*, to testify between *A. B.* plaintiff and *C. D.* defendant, on the part of the plaintiff [*or defendant*], the day of 18 .

(Signed) { *A. B.* } or { *P. A.*, plaintiff's [*or defendant's*] proctor, solicitor
 { *C. D.* } or attorney.

No. 20.—*Præcipe for Subpœna duces tecum.*

In Her Majesty's Court of Probate.

Subpœna for *W. W.* to testify and produce, &c. between *A. B.* plaintiff, and *C. D.* defendant, on the part of the plaintiff [*or defendant*], the day of 18 .

(Signed) { *A. B.* } or { *P. A.*, plaintiff's [*or defendant's*] proctor, solicitor
 { *C. D.* } or attorney.

No. 21.—*Notice to admit Documents.*

In Her Majesty's Court of Probate.

A. B. v. C. D.

Take notice, that the plaintiff *or* defendant in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant *or* plaintiff at on between the hours of and the defendant *or* plaintiff is hereby required, within 48 hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been, that such as are specified to be copies are true copies, and such documents as are stated to have been served, sent or delivered were so served, sent, or delivered respectively, saving all just exceptions to the admissibility of all such documents as evidence in the cause. Dated, &c.

To *A.B. C.D.* or to *E.F.* attorney or solicitor or agent for defendant or plaintiff.

(Signed) *C.D. A.B.* or *G.H.* attorney or solicitor or agent for plaintiff or defendant.

[*Here describe the documents. The same form may be employed in describing the documents as is now in use in the Common Law Courts.*]

No. 22.—*Subpoena to bring in a Script in a Cause.*

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, defender of the Faith.

To of .

Whereas there is now proceeding in our Court of Probate a certain business of proving in solemn form of law the last will and testament of *A. B.* late of deceased, who died on or about at , the said will bearing date the day of , 18 , promoted by *C. D.*, the sole executor [*or as the case may be*] therein named, against *E. F.*, the natural and lawful brother and one of the next of kin of the said deceased [*or as the case may be*]: and whereas it appears by a certain affidavit of the said *C. D.* made in the said cause, bearing date the day of , 18 , and now remaining in the registry of our said court, that a certain original paper writing or script, purporting to be testamentary, to wit, [*here describe the paper accurately,*] is now in your possession or under your control: Now this is to command you, that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the registry of our said court the aforesaid script, or in case the said script be not in your possession or under your control, that you, within eight days after the service hereof on you, exclusive of the day of such service, do file in the registry of our said court an affidavit to that effect, and therein set forth what knowledge you have of and respecting the said script; and this you shall nowise omit, under the penalty of 100*l.* Witness [*insert the name of the judge*], at the Court of Probate, the day of 18 in the year of our reign.

Indorsement to be made after service.

This citation was served by *I. K.* on the within named of at on the day of 18 . (Signed) *I. K.*

No. 23.—*Subpœna to a Witness to be examined touching a Testamentary Paper of which he is supposed to have knowledge.*

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, defender of the Faith.

To of , greeting. We command you, that, all other things set aside, and ceasing every excuse, you do appear before A. B., the judge of our Court of Probate, at our Court of Probate, at on the day of 18 , by of the clock in the forenoon of the same day, and so from day to day until you be dismissed by our said judge, to testify the truth according to your knowledge [or to answer to certain interrogatories to be administered to you], touching a certain paper writing or script, purporting to be testamentary, of which reasonable grounds have been furnished to our said judge for believing that you have knowledge. And this you shall nowise omit, under the penalty of 100*l.* Witness [insert the name of the judge], at the Court of Probate, the day of 18 , in the year of our reign.

Indorsement to be made after service.

This citation was served by I. K. on the within-named on the day of 18 .
(Signed) I. K.

No. 24.—*Præcipe for a Witness to bring in a Script.*

In Her Majesty's Court of Probate.

Subpœna for W. W. to bring into and leave in the registry [here accurately describe the script].

The day of 18 .
(Signed) [A. B. or C. D.,] or P. A., plaintiff's
[or defendant's] proctor, solicitor or attorney.

No. 25.—*Præcipe for a Witness to be examined touching a Testamentary Paper, of which he is supposed to have knowledge.*

In Her Majesty's Court of Probate.

Subpœna for W. W. to testify respecting of a paper writing or script purporting to be testamentary, to wit [describing it], of which he has knowledge, on the part of this day of 18 .
(Signed) [A. B. or C. D.,] or P. A., plaintiff's [or defendant's] proctor, solicitor or attorney.

No. 26.—*Entry on the Record of a Verdict for Plaintiff.*

Afterwards, on the day of , 18 ,

before , the judge of her Majesty's Court of Probate, come the parties within mentioned, by their respective attorneys [*or as the case may be*] within mentioned, and a jury duly summoned also come, who, being sworn to try the matters in question between the parties, upon their oath say, that [*state the affirmative or negative of the issue, as it is found for the plaintiff, and in the terms adopted in the pleading.*]

[*If there be several issues joined and tried, then say*] as to the first issue within joined upon their oath say, that [*here state the affirmative or negative of issue, as found for plaintiff*], and as to the second issue within joined, the jury aforesaid upon their oath say, &c. [*so proceed to state the finding of the jury on all the issues*]; and that with respect to the costs in the said cause the said judge on the same day [*as the case may be*] directed [*here insert direction as to costs.*]

(Signed) A. B., Registrar.

No. 27. *Entry on the Record of a Judgment for Plaintiff.*

Afterwards, on the day of 18 , before the judge of Her Majesty's Court of Probate, come the parties within mentioned, by their respective attorneys [*or as the case may be*] within mentioned: Whereupon the judge decreed [*here insert the tenor of the decree*]. (Signed)

A. B., one of the registrars of Her Majesty's Court of Probate.

No. 28. *Inventory.*

A true, full, and particular inventory of all and singular the personal estate and effects of A. B., late of , deceased, which have at any time since his death come to the hands, possession, or knowledge of C. D., the sole executor named in the last will and testament of the said A. B. [*or administrator, as the case may be*], made and exhibited upon and by virtue of the corporal oath [*or solemn affirmation*] of the said C. D., as follows, to wit:

First, this exhibitant saith, that the said deceased was at the time of his death possessed of - - - - -	£	s.	d.
[<i>The details of the deceased's effects must be here inserted in as many sheets of paper as may be necessary, and the value inserted opposite to each particular.</i>]			

Lastly, this exhibitant saith, that no personal estate

or effects of or belonging to the said deceased have at any time since his death come to the hands, possession, or knowledge of this exhibitant, save as is hereinbefore set forth. (Signed) C. D.

On the day of 18 the said C. D. was duly sworn to [or solemnly affirmed] the truth of the above inventory, Before me,
[Person authorized to administer oaths under the Act.]

No. 29.—*Petition.*

The day of , 18 .
A. B. or [A. B., proctor, solicitor or attorney for C. D.], says, that
[Here insert all the facts which are to be alleged.]
Wherefore the said A. B. prays, that
[Here end with the prayer of the petitioner.]
(Signed) A. B.

Answer.

The day of , 18 .
E. F. [or E. F., proctor, solicitor or attorney for G. H.], says, that
[Here insert the facts alleged in answer.]
Wherefore the said E. F. prays, that
[Here insert the prayer of the defendant.]
(Signed) E. F.
The reply, rejoinder, &c. (if any such be necessary), are to be followed out in the same form.

FEEs

*To be taken in Court and Contentious Business in the
Court of Probate.*

	£	s.	d.
On every citation	0	5	0
On every citation to see proceedings ...	0	5	0
On entering appearance	0	2	6
Filing declaration	0	5	0
Filing plea	0	5	0
Filing act on petition	0	5	0
Filing answer	0	5	0
Filing reply	0	5	0
Filing any further writing to the act ...	0	5	0
Filing inventory	0	5	0
On pleadings amended or reformed...	0	2	6
Filing interrogatories... ..	0	5	0
Filing answers to interrogatories ...	0	5	0
Filing affidavit as to scripts... ..	0	2	6
Filing every script annexed to such affidavit	0	5	0
Filing case for motion	0	5	0
For entering the order of court on motion	0	5	0
Summons to attend in chambers ...	0	2	6
For entering the order of court on sum- mons	0	2	6
Filing notices... ..	0	1	0
On depositing the record	1	0	0
Setting a cause down for hearing or trial ...	0	5	0
Entering the final decree in a cause ...	0	10	0
Entering special verdict, if five folios of seventy-two words or under	0	2	6
If exceeding five folios, per folio of seventy- two words	0	0	6
Entering order appointing a receiver of real estate	1	0	0
Entering decree or order in pursuance of judgment of an extinct court	0	10	0
Entering any order or decree made with consent of parties by the judge	0	10	0
Entering any order or decree in the court- book, not otherwise specified	0	2	6
On withdrawal of a cause after the same is set down for hearing or trial, to be paid by the party at whose instance it is with- drawn	0	5	0
On the hearing or trial of a cause:			
From the plaintiff	1	0	0
From the defendant	0	15	0
If the hearing or trial continues more than one day, for each day:			
From the plaintiff	0	10	0

	£	s.	d.
From the defendant	0	10	0
Reducing into writing any question to be submitted to a jury under the judge's direction	1	0	0
Producing the judge's notes	0	5	0
Bill of exceptions signed by the judge	0	5	0
Entering on the record the finding of the jury or the decision of the judge	0	5	0
On every subpoena	0	2	6
On every commission issuing under seal of the court	1	0	0
Writ of attachment	0	7	6
Writ of sequestration	1	0	0
Filing certificate of County Court judge	0	1	0
Search in court books, if within the last five years	0	1	0
If at an earlier period than within the last five years	0	2	6
Bond to be executed as security for costs or by a receiver of real estate, or for any other purpose or by any other person:			
If three folios of seventy-two words, or under	0	5	0
If above three folios of seventy-two words, per folio	0	2	0
Assignment of bond	0	5	0
Filing and entry of remission of appeal	0	10	0
Filing exhibits, not exceeding ten folios each exhibit	0	1	0
If exceeding ten but not exceeding twenty	0	10	0
If exceeding twenty but not exceeding fifty	0	15	0
If exceeding fifty	1	0	0
Office copies of orders or decrees, judge's notes, or other documents filed in a cause:			
If five folios of seventy-two words or under	0	2	6
If exceeding five folios of seventy-two words, per folio	0	0	6
Filing every affidavit or other document brought into court, and deposited in the registry, not otherwise specified	0	2	6
Taxing every bill of costs:			
If three folios of seventy-two words or under	0	2	6
If exceeding three folios of seventy- two words:			
When taxed as between party and party, per folio	0	0	6

CONTENTIOUS BUSINESS.

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When taxed as between practitioner and client, per folio	£	s.	d.
Office copy of will under seal of the court :	0	1	0
In addition to fees of the office copy of the will	1	0	0
Commissioner of the court for administering oaths to each deponent	0	1	6
Examiner appointed to take depositions under a commission for examination of witnesses, for each day's attendance, besides travelling expenses	8	3	0

FEEES.

To be taken by Officers of the County Courts in respect of Business under the Act.

The same Fees as in case of a Plaint for a sum of 20l

FEEES.

To be taken for their own use by the Proctor, Solicitor, and Attornies practising in the Court of Probate in Contentious Business.

Citation, including præcipe	0	7	6
Citation to see proceedings, including præcipe	0	7	6
Certificate of service	0	2	6
Subpœna ad testificandum	0	5	0
Subpœna duces tecum, or to bring in a script, if five folios of seventy-two words, or under	0	5	0
If exceeding five folios, per folio	0	1	0
Writ of attachment, including præcipe	0	7	6
Writ of sequestration, including præcipe	0	7	6
Service of citation or subpœna, if within two miles of the place of business of the practitioner or of the person employed to effect the service	0	5	0
If beyond that distance and not exceeding ten miles, for every mile one way	0	1	0
Affidavit of service, if three folios of seventy-two words or under	0	5	0
If above, for every folio, including copy	0	1	4
In cases in which the person to be served shall avoid service, or shall reside beyond the jurisdiction, except in Scotland and Ireland, a sum to be allowed for service according to the circumstances.			

Instructions.

Instructions for citation, for pleadings, for interrogatories, for special affidavits, or for inventories	£	s.	d.
Ditto to defend suit	0	6	8
Ditto for brief, or case for hearing... ..	0	13	4

Pleadings and Copies.

Drawing and engrossing declaration, if ten folios of seventy-two words or under ...	1	0	0
If exceeding ten folios, for every additional folio	0	1	4
Drawing and engrossing pleas, replications, and other pleadings, if ten folios of seventy-two words or under	1	0	0
If exceeding ten folios, for every additional folio	0	1	4
Copies of declaration or pleas to file, at per folio of seventy-two words	0	0	4
Drawing the issue, if fifteen folios, of seventy-two words or under, including copy	0	10	0
If exceeding fifteen folios, per folio, in- cluding copy	0	0	8
Engrossing record to file, at per folio of seventy-two words	0	0	6
All copies on parchment, per folio of seventy- two words, including the parchment ...	0	0	6
Drawing and engrossing demurrer, inclusive of the statement of any matter of law to be argued, for ten folios of seventy-two words or under	0	10	0
If exceeding ten folios of seventy-two words, per folio	0	1	0
Copy to file, at per folio of seventy-two words	0	0	4
Copy of the issue on demurrer, at per folio of seventy-two words	0	0	4
Drawing and engrossing special case, or case for motion, per folio of seventy-two words	0	1	4
Drawing bill of costs and copy for taxation, per folio of seventy-two words	0	1	0
Copy for the adverse party, per folio of seventy-two words	0	0	4
Drawing any instrument to be filed in or issued by the registry for which no other fee is herein allowed, and for fair copy to be filed or issued, per folio of seventy-two words	0	1	4

CONTENTIOUS BUSINESS.

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Notices.

All necessary notices, if three folios or under, inclusive of copy and service ...	£ s. d.
0 5 0	
If exceeding three folios, for every additional folio ...	0 1 0
In all cases where service of a notice is necessary beyond two miles of the place of business of the practitioner, the same fee as upon the service of a citation.	
Copy of summons or order of the judge, and service ...	0 5 0

Attendances.

Attendance to search for appearance to citation, or subpoena to bring in scripts ...	0 6 8
For attendance on counsel with brief, when the fee to counsel is one guinea ...	0 8 4
When the fee to counsel exceeds one guinea and is under five guineas ...	0 6 8
When the fee is five guineas and upwards ...	0 13 4
Attendance on consultation ...	0 13 4
Attendance on conference ...	0 6 8
Attendance in pursuance of notice to admit ...	0 6 8
For every hour after the first ...	0 6 8
Attendance on trial or hearing when cause is in paper and not tried or heard, or on motion in court ...	0 13 4
On trial or hearing ...	1 1 0
If it lasts the whole day ...	2 2 0
Attendance on taxation of bill of costs ...	0 13 4
If very long an additional fee will be allowed.	
Attendance on examination of witnesses under a commission—	
If in England or Wales, per diem ...	2 2 0
If elsewhere ...	3 8 0
For all necessary attendances in chambers before the judge or before a commissioner, on counsel, in the registry, or upon the adverse parties or practitioner, for which no other fee is herein allowed ...	0 6 8

Briefs and Cases for Hearing.

For drawing same, per folio of seventy-two words ...	0 1 0
For each copy, per folio of seventy-two words ...	0 0 4
Letters. Every necessary letter during the dependence of the cause ...	0 8 6
Term fees and letters and messengers each term in which any business is done ...	0 15 0

	£	s.	d.
For maps or plans each from	1	1	0
	3	3	0
Copies of same if required each from	0	10	0
	1	9	0

Affidavits.

Drawing special affidavits, per folio of seventy-two words, and copy for the court	0	1	4
Common affidavit, if five folios or under, including copy for the court or registry	0	6	8
If above five folios, per folio including copy	0	1	4
Defendants—			
Entering appearance	0	6	8

Interrogatories.

For drawing the same, at per folio of seventy-two words	0	1	0
Copy thereof to be delivered to the examiner and filed, at per folio of seventy-two words	0	0	4

Copies of Scripts or Exhibits.

For every plain copy of a script, exhibit, or other instrument filed in the registry, per folio of seventy-two words	0	0	4
If the same or any part thereof are required to be made <i>fac simile</i> , in addition to the above per folio of seventy-two words.....	0	0	2

If in any court or contentious business it should become necessary for Proctors, Solicitors, or Attorneys to transact any business for which no fee is herein specified, such fee shall be taken by them as would be allowed for similar business done in the Courts of Common Law and Equity, as the case may be.

FEES

To be taken for the use of other persons by the Proctors, Solicitors and Attorneys practising in the Court of Probate in Contentious Business.

Counsel's Clerks' Fees.

Not to exceed as under:			
Upon a fee to counsel under 5 guineas ...	0	2	6

	£	s.	d.
5 guineas and under 10 guineas ...	0	5	0
10 guineas and under 20 guineas ...	0	10	0
20 guineas and under 30 guineas ...	0	15	0
30 guineas and under 50 guineas ...	1	0	0
50 guineas and upwards—at per cent. on the fee paid	2	10	0
On consultations			
Senior's clerk	0	7	6
Junior's clerk	0	2	6
On general retainer	0	10	6
On common retainer... ..	0	2	6
On conference... ..	0	5	0

Witnesses' Expenses.

Allowance to witnesses including their board and lodging, as between party and party :			
Common witnesses, such as labourers, journeymen, &c. &c. :			
If resident within five miles of the General Post-office, per diem ...	0	5	0
If beyond that distance, per diem ...	0	7	6
Master tradesmen, yeomen, farmers, &c. :			
If resident within five miles of the General Post-office, per diem ...	0	10	0
If resident beyond that distance, per diem	0	15	0
Auctioneers and accountants :			
If resident within five miles of the General Post-office, per diem	1	1	0
If resident beyond that distance, per diem	2	2	0
Professional men, including notaries, engineers, and surveyors, &c. :			
If resident within five miles of the General Post-office, per diem	1	1	0
If resident beyond that distance, per diem	8	8	0
Clerks to attorneys or others :			
If resident within five miles of the General Post Office, per diem	0	10	6
If resident beyond that distance, per diem	1	1	0
Esquires, bankers, merchants, and gentlemen, per diem	1	1	0
Females according to station in life :			
If resident within five miles of the General Post Office, per diem, from 5s. to	0	10	0
If resident beyond that distance, per diem from 7s. 6d. to	1	0	0

Police inspector:—	£ s. d.
If resident within five miles of the General Post Office, per diem ...	0 7 6
If resident beyond that distance, per diem ...	0 10 0

Police constable:—	
If resident within five miles of the General Post Office, per diem ...	0 5 0
If resident beyond that distance, per diem ...	0 7 6

The travelling expenses of witnesses will be allowed according to the sums reasonably and actually paid; but in no case will there be an allowance for such expenses of more than 1s. per mile one way.

RULES, ORDERS, AND INSTRUCTIONS
FOR
THE DISTRICT REGISTRARS
OF

HER MAJESTY'S COURT OF PROBATE,

Made under the provisions of the "Act to amend the Law relating to Probates and Letters of Administration in England," (20 & 21 Vict. cap. 77), in respect of

NON-CONTENTIOUS BUSINESS.

Non-contentious business shall include all common form business as defined by the Act, and the warning of caveats.

Application for Probate or Letters of Administration.

1. Application for probate or letters of administration may be made at the principal registry in all cases. Application may be also made at a district registry in cases where the deceased at the time of his death had a fixed place of abode within the district in which the application is made, and not otherwise.

2. Such applications may be made through a proctor, solicitor, or attorney, or in person.

3. The district registrar, before he entertains any application for probate or administration, will take care to ascertain that the deceased had at the time of his death a fixed place of abode within his district.

4. In no case should the district registrar allow the probate or letters of administration to issue until all the inquiries which he may see fit to institute have been answered to his satisfaction, and this refers more particularly to applications made by a party in person. The district registrar is, notwithstanding, to afford as great facility for the obtaining grants of probate or administration as is consistent with a due regard to the prevention of error or fraud.

5. No district registrar shall take out probate or letters of administration for himself in his own district.

As to Probate of Wills and Codicils and Letters of Administration, with the Will [or Will and Codicils] annexed, where the Wills and Codicils or the Codicils only are dated after 31st December 1837.

6. Upon receiving an application for probate or letters of administration with the will annexed, the district registrar must inspect the will, and see whether it purport to be signed by the testator or by some other person in his presence and by his direction, and subscribed by two witnesses, according to the provisions of 1 Vict. c. 26, s. 9, and 15 & 16 Vict. c. 24, and in no case must he proceed further if the will be not so signed and subscribed.

7. If the will be signed by or for the testator, and subscribed by two witnesses, the district registrar must then refer to the attestation clause (if any), and consider whether from the wording thereof the will purports to have been executed in accordance with 1 Vict. c. 26, s. 9.

8. If there be no attestation clause to the will, or if the attestation clause thereto be insufficient, the district registrar must require an affidavit from at least one of the subscribing witnesses, if either of them are living, to prove that the provisions of the act in reference to the execution of the will were in fact complied with; and such affidavit must be engrossed and form part of the probate, so that the same may be a perfect document on the face of it.

9. If on perusing the affidavit it appear that the requirements of the statute were not complied with the district registrar must refuse probate.

10. If on perusing the affidavit or affidavits setting forth the facts of the case, it appear doubtful whether the will has been duly executed, the district registrar must transmit a statement of the matter to the registrars of the principal registry, whose duty it will then be to obtain the directions of the judge thereon.

11. If both the subscribing witnesses are dead, or if from other circumstances no affidavit can be obtained from either of them, resort must be had to other persons (if any) who may have been present at the execution of the will; but if no affidavit of any such other person can be obtained, evidence on affidavit must be procured of that fact and of the handwriting of the subscribing witnesses, and also of any circum-

stances which may raise a presumption in favour of the due execution of the will.

12. Having satisfied himself that the will was duly executed, the district registrar must carefully inspect the same, to see whether there are any interlineations or alterations appearing in it and requiring to be accounted for. Interlineations and alterations are invalid unless they existed in the will at the time of its execution, or, if made afterwards, unless they have been executed and attested in the mode required by the statute, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of some codicil thereto.

13. Where interlineations or alterations appear in the will (unless duly executed or accounted for by the attestation clause), an affidavit or affidavits in proof of their having existed in the will before its execution, must be filed, except when the alterations are merely verbal or are of but small importance, and are evidenced by the initials of the attesting witnesses.

14. In like manner, with regard to erasures and obliterations, they are not to prevail unless proved to have existed in the will at the time of its execution, or unless the alterations thereby effected in the will are duly executed and attested, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of some codicil thereto. If no satisfactory evidence is adduced as to the time when such erasures and obliterations were made, and the words erased or obliterated can, upon inspection of the paper, be readily ascertained, they must form part of the probate.

15. In every case of words having been erased which might have been of importance, an affidavit must be required.

16. If reasonable doubt exist in regard to any interlineation, alteration, erasure, or obliteration, the district registrar should, before proceeding to grant probate, communicate with the registrars of the principal registry as directed by the statute (sect. 50.)

17. If a will contain a reference to any deed, paper, memorandum, or other document, of such a nature as to raise a question whether it ought or ought not to form a constituent part of such will, the production of such deed, paper, memorandum, or other document should be required, with a view to ascertain whether it be entitled to probate; and if not produced its non-production should be accounted for.

18. No deed, paper, memorandum, or other document can form part of a will or codicil unless it were in existence at the time when the will or codicil was executed.

19. If any vestiges of sealing wax or wafers or other appearances are observable, leading to the inference that any paper, memorandum, or other document may have been attached to the will, they should be satisfactorily accounted for, or the production of such paper, memorandum, or other document should be required; and if not produced its non-production should be accounted for. If doubt exists as to whether any deed, paper, memorandum, or other document be entitled to probate, the district registrar should, before proceeding to grant probate, communicate with the registrars of the principal registry, as directed by sect. 50 of the statute.

20. The above rules and orders respecting wills apply equally to codicils.

21. In case of probate or administration with the will of a married woman annexed made by virtue of a power, the power or powers under which the will purports to have been made should be specified in the grant.

22. No grant of probate or administration with the will annexed, the will being *simply* an execution of a special power, should be made without communication with the registrars of the principal registry.

23. The right of parties to administration with the will annexed, and administration (with the will annexed) *de bonis non*, depends so entirely upon the circumstances of each particular case taken in connexion with the wording of the will, that no general rules, other than those which have obtained a judicial sanction, can be laid down for the guidance of the district registrars. Whenever the right of the party applying is at all questionable, a statement of the case, accompanied by a copy of the will, must be transmitted to the registrars of the principal registry for the directions of the judge thereon.

As to Probate of Wills, Codicils, and Testamentary Papers relating to Personalty, and dated before the 1st January 1838.

24. It is not necessary that a will, codicil, or testamentary paper made before 1st January 1838 should be attested by witnesses to constitute it a valid disposition of a testator's personal property. Although neither signed by the testator nor attested by

witnesses, it may nevertheless be valid; but in such cases the testator's intention that it should operate as his will, codicil, or testamentary disposition must be proved clearly by circumstances.

25. If the will, codicil, or testamentary paper, be signed by the testator at the end of it, and attested by two disinterested witnesses, the district registrar (although there be no clause of attestation) must consider it as *prima facie* entitled to probate.

26. In cases where the will, codicil, or testamentary paper is attested by two witnesses, such witnesses are not required to have been present with the testator at the same time. It is sufficient if the testator subscribed his name or made his mark to it in the presence of, or produced it with his name already written or his mark already made, to one attesting witness, and afterwards to the other attesting witness, provided that on each occasion he declared it to be his will, or otherwise notified his intention that it should operate as such.

27. If the will, codicil, or testamentary paper is signed at the end of it by the testator, but is unattested, and there is nothing to show an intention that it should be attested by witnesses, the affidavit of two disinterested persons to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

28. If the will, codicil, or testamentary paper is signed at the end of it by the testator, and attested by one witness only, and there is nothing to show the testator's intention that it should be attested by a second witness, the affidavit of one disinterested person to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

29. The circumstance of a person being named as an executor in the will, codicil, or testamentary paper, or being interested as a legatee or as the husband or wife of a legatee under such will, codicil, or testamentary paper, rendered him incompetent to become an attesting witness to it, so that if the name of a person so interested appears as that of a subscribing witness to the will, codicil, or testamentary paper, the same, so far as regards his attestation, must be considered as unattested, and his evidence in support thereof will be inadmissible, unless he shall first release his interest thereunder.

80. In all cases the district registrar should carefully inspect and peruse the will or testamentary

paper, with a view to ascertain that it is a complete document. If, for example, an attestation clause, or the word "witnesses," appear written at the foot of the paper, the same being unattested; or if the paper purport on the face of it to be a draft of a will, the copy of a will, or instructions for a will, it must *prima facie* be considered as an incomplete paper, and not, save under special circumstances, entitled to probate. Also, any appearance of an attempted cancellation of a paper by burning, tearing, obliteration, or otherwise must be accounted for.

31. Every fact leading to a presumption of abandonment or revocation of a paper on the part of the testator must be accounted for.

32. Such cases will generally, in consequence of the lapse of time, be doubtful cases, and proper to be transmitted to the registrars of the principal registry, under sect. 50 of the Act.

33. Alterations and interlineations made by the testator, if unattested, are to be proved by an affidavit of two persons to his handwriting. If the same are in the handwriting of any person other than the testator, it will suffice to prove by affidavit that they were known to and approved of by the testator. Proof by affidavit that they existed in the paper at the time it was found in the repositories of the testator recently after his death may, under circumstances, suffice. Alterations and interlineations made since the 31st of December 1837 are subject to the provisions of 1 Vict. c. 26.

34. With respect to deeds, papers, memoranda, or other documents mentioned in a testamentary paper, or appearing to have been annexed or attached thereto, the foregoing instructions as to wills bearing date since the 31st of December 1837 will apply.

35. It is to be remembered that a will made before the 1st of January 1838 is confirmed by a codicil duly executed on or after that day.

As to Letters of Administration.

36. The duties of the district registrar in granting administration are in many respects the same as in cases of probate. He is to ascertain the time and place of the deceased's death, and the value of the property to be covered by the administration, and to see that the applicant has been sworn as required by statute 55 Geo. 3, c. 184.

37. Where administration is applied for by one or

some of the next of kin only, there being another or other next of kin equally entitled thereto, the district registrar may require proof by affidavit or statutory declaration that notice of such application has been given to such other next of kin.

38. Limited administrations are not to be granted unless every person entitled in distribution to the personal estate has consented or renounced, or has been cited and failed to appear, except under the direction of the judge.

39. No person entitled to a grant of administration of the personal estate and effects of the deceased generally will be permitted to take a limited grant.

40. The district registrars are to take care (as far as possible) that the sureties to administration bonds are responsible persons.

41. In all cases where grants of administration are made for the use and benefit of minors, the administrators are required to exhibit a declaration on oath of the personal estate and effects of the deceased, except where the effects are sworn under twenty pounds, or where the administrators are the guardians appointed by the High Court of Chancery, or are the testamentary guardians of the minors; and in all cases of persons cited, but not personally, and not appearing, the administrators are required to exhibit a similar declaration, and the sureties are required to justify.

42. There are many administrations of a special character which will need attention on the part of the district registrars. In special cases the recitals in the oath and in the letters of administration must be framed in accordance with the facts of the case.

43. Grants of administration will continue to be made as heretofore to the guardians of infants and minors, for the use and benefit of such infants and minors during their minority; and elections by minors of their next of kin or next friend, as the case may be, to such guardianship, will continue to be required; but proxies accepting such guardianship will in future be dispensed with.

44. No probate or letters of administration, with the will annexed, shall issue until after the lapse of seven days from the death of the deceased, unless under the direction of the judge.

45. No administration shall issue until after the lapse of fourteen clear days from the death of the deceased, unless under the direction of the judge.

General Instructions for the District Registrars.

46. In cases where the district registrar receives his instructions from the parties interested, and without the intervention of any proctor, solicitor, or attorney, he will take care to ascertain the value of the estate and effects of the deceased as correctly as circumstances allow.

47. No administration shall issue until after the lapse of fourteen clear days from the death of the deceased, unless under the direction of the judge.

48. The district registrars may, in cases where they deem it necessary, require proof, in addition to the oath of the executor or administrator, of the identity of the deceased or of the party applying for the grant.

49. In every case where a grant of probate or administration is for the first time applied for after the lapse of three years from the death of the deceased, the reason of the delay is to be certified to the district registrar. If the certificate is not satisfactory the district registrar is to require an affidavit, or to communicate with the principal registry.

50. Notices of applications for grants of probate or administration, with the will annexed, transmitted by the district registrar to the registrars of the principal registry (as directed by section 49), are to contain (in addition to the particulars therein specified) an extract of the words of the will or codicil by which the applicant has been appointed executor, or of the words (if any) upon which he founds his claim to such administration.

51. District registrars should take care that the oath of administrators, and of administrators with the will annexed, is so worded as to clear off all persons having a prior right to the grant. In these cases, the grant should show on the face of it how the prior interests have been cleared off.

52. Under the statute the Court of Probate has power to appoint an administrator other than the person who, prior to the Act, would have been entitled to the grant (sect. 78). Whenever the court sees fit to exercise such a power, the fact should be made plainly to appear in the oath of the administrator, in the letters of administration, and in the administration bond.

53. The usual oath of administrators is, as well as that of executors and administrators with the will, to be reduced into writing, and to be subscribed and

sworn by them as an affidavit, and then filed in the registry.

54. Every will or copy of a will to which an executor or administrator with the will is sworn should be marked by such executor or administrator, and by the person before whom he is sworn.

55. In cases where it is necessary to issue a citation to accept or refuse probate of a will, or to accept or refuse letters of administration, or where it is necessary to issue a subpoena to bring in a testamentary paper, and in all similar cases, the district registrar is to communicate with the registrars of the principal registry, who will then issue such citation, subpoena, or other requisite instrument in accordance with the direction of the judge.

56. The district registrar is not, in any case in which a will has been produced to him for probate, or for administration with the will annexed, to grant probate of any former will, or administration with any former will annexed, or administration to the deceased as having died intestate, without previous communication with the registrars of the principal registry.

57. When motions are to be made before the judge in court with regard to applications for probate and administration made at the district registries, the district registrars are to transmit all original papers and documents to the principal registry, and the same, after the directions of the court have been taken, will be returned, with the directions of the judge thereon.

58. The original papers are also to be forwarded whenever an inspection of them is necessary, in order to enable the registrars of the principal registry to answer the questions submitted to them by the district registrar.

59. Papers and other documents may be transmitted by the district registrars to the registrars of the principal registry through the post-office. Such letters or packets are to be superscribed with the words, "on her Majesty's service," and may be registered, if thought necessary.

60. In the case of persons residing out of England, administrations with the will annexed, and administrations, may be granted to their attorney, acting under a power of attorney properly attested.

61. The addition and true place of abode of every person making an affidavit is to be inserted therein.

62. In every affidavit made by two or more persons, the names of the several persons making it are to be written in the jurat.

63. No affidavit will be admitted in any matter depending in the Court of Probate in the jurat of which there is any interlineation or erasure.

64. Where an affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the district registrar, commissioner, or other person before whom such affidavit is made, is to state in the jurat that the affidavit was read in the presence of the party making the same, and that such party seemed perfectly to understand the same, and also that the said party made his or her mark, or wrote his or her signature, in the presence of the district registrar, commissioner, or other person before whom the affidavit was made.

65. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his proctor, solicitor, or attorney, or before a clerk of his proctor, solicitor, or attorney.

66. A proctor, solicitor, or attorney, and their clerks respectively, if acting for any other proctor, solicitor, or attorney, shall be subject to the rules in respect of taking affidavits which are applicable to those in whose stead they are acting.

67. A caveat shall remain in force for the space of six months only, and then expire and be of no effect; but caveats may be renewed from time to time as heretofore.

68. The district registrar shall immediately upon a caveat being lodged send a copy thereof to the registrars of the principal registry, and also to the registrars of any other district in which it is alleged the deceased resided at the time of his death, or in which he is known to have had a fixed place of abode at the time of his death.

69. No caveat shall affect any grant made on the day on which the caveat is entered, unless notice of such caveat has been received prior to the grant passing the seal.

70. A caveat shall be warned at the place mentioned in it as the address of the person who entered it.

71. It shall be sufficient for the warning of a caveat that the district registrar send by the public post a

warning signed by himself, and directed to the person who entered it, at the address mentioned in it.

72. Any person intending to oppose a grant of probate or administration for which application has been made to a district registrar is to appear before such district registrar, either personally, or by his proctor, solicitor, or attorney, and signify such his intention: otherwise such person is to cause an appearance to be entered for him in the principal registry. This rule is to apply whether the person intending to oppose the grant has or has not been previously warned to a caveat or served with a citation.

73. The district registrar shall, upon being informed of any such intention to oppose a grant, require the person intending to oppose the same to furnish him with his name and address, and in case of a proctor, solicitor, or attorney, with his client's name and address, and shall forward a notice of such declared intention, with the name and address of the party, and of his proctor, solicitor, or attorney (if any), to the registrars of the principal registry.

74. The district registrar shall in no case, after he has forwarded to the registrars of the principal registry a notice of intention to oppose a grant, take any further step in respect of such grant, except under the directions of the judge of the Court of Probate or of a County Court judge.

75. Citations against all persons in general, and other instruments, heretofore required to be served by affixing them in some public place, are in future to be served by the insertion of the same as advertisements in such of the leading morning and evening papers, and such of the local papers, as the judge may from time to time direct. Such citations can only be allowed to issue in cases where there is an affidavit to lead them.

76. The lists of grants of probate and administration required under sect. 51, are to be furnished by the district registrars on the first and every other Thursday in the month, and are to contain, the date of each grant; the name of the registry in which each grant was made; the Christian and surname of each testator and intestate; the place and time of death of such testator and intestate; the names and description of each executor and administrator to whom the grant has been made; and the value of the personal estate and effects in each case.

77. A district registrar is not to grant probate, or administration with the will annexed, of the will of any blind person, or of any obviously illiterate or

Police inspector:—	£ s. d.
If resident within five miles of the	
General Post Office, per diem ...	0 7 6
If resident beyond that distance, per	
diem	0 10 0
Police constable:—	
If resident within five miles of the	
General Post Office, per diem ...	0 5 0
If resident beyond that distance, per	
diem	0 7 6
The travelling expenses of witnesses will be allowed	
according to the sums reasonably and actually	
paid; but in no case will there be an allowance	
for such expenses of more than 1s. per mile one	
way.	

RULES, ORDERS, AND INSTRUCTIONS
FOR
THE DISTRICT REGISTRARS
OF

HER MAJESTY'S COURT OF PROBATE,

Made under the provisions of the "Act to amend the Law relating to Probates and Letters of Administration in England," (20 & 21 Vict. cap. 77), in respect of

NON-CONTENTIOUS BUSINESS.

Non-contentious business shall include all common form business as defined by the Act, and the warning of caveats.

Application for Probate or Letters of Administration.

1. Application for probate or letters of administration may be made at the principal registry in all cases. Application may be also made at a district registry in cases where the deceased at the time of his death had a fixed place of abode within the district in which the application is made, and not otherwise.

2. Such applications may be made through a proctor, solicitor, or attorney, or in person.

3. The district registrar, before he entertains any application for probate or administration, will take care to ascertain that the deceased had at the time of his death a fixed place of abode within his district.

4. In no case should the district registrar allow the probate or letters of administration to issue until all the inquiries which he may see fit to institute have been answered to his satisfaction, and this refers more particularly to applications made by a party in person. The district registrar is, notwithstanding, to afford as great facility for the obtaining grants of probate or administration as is consistent with a due regard to the prevention of error or fraud.

legatee named in the said will], in the words following:—

[*Here insert the extract from the will or codicil.*]

(Signed) G. H.,
District Registrar.

No. 1 b.—*Notice to be transmitted by the District Registrar of Application having been made to him for Grant of Administration.*

The District Registry of .

To the Registrars of the Principal Registry of her Majesty's Court of Probate.

You are requested to take notice, that application has been made to me for a grant of letters of administration of the personal estate and effects of A. B., late of deceased, who died on or about the day of 18 at intestate, having at the time of his death a fixed place of abode at within the said district of , a widower, without child or parent, brother or sister, uncle or aunt, nephew or niece, by C. D. of one of the lawful cousins german and next of kin of the deceased [or by E. F. of the proctor, solicitor, or attorney of C. D., one of the, &c.].

(Signed) G. H.,
District Registrar.

No. 1 c.—*Notice of the Entry of a Caveat in a District Registry.*

To the Registrars of the Principal Registry of her Majesty's Court of Probate.

You are requested to take notice, that a caveat has been entered in the district registry of attached to her Majesty's Court of Probate, of the following tenor [*set out the caveat at full length*].

This day of 18 .
(Signed) C. D.,
District Registrar.

No. 2.—*Affidavit of attesting Witness in proof of the due Execution of a Will or Codicil dated after 31st December 1837.*

In her Majesty's Court of Probate. The District Registry of .

In the goods of A. B., deceased.

I C. D. of in the county of make oath

[*or solemnly affirm*], that I am one of the subscribing witnesses to the last will and testament [*or codicil, as the case may be*] of the said *C. D.*, late of in the county of deceased, the said will [*or codicil*] being now hereunto annexed, bearing date , and that the said testator executed the said will [*or codicil*] on the day of the date thereof, by signing his name at the foot or end thereof. [*or in the testimonium clause thereof, or in the attestation clause thereto, as the case may be*], as the same now appears thereon, in the presence of me and of the other subscribed witness thereto, both of us being present at the same time, and we thereupon attested and subscribed the said will [*or codicil*] in the presence of the said testator. (Signed) *C. D.*

Sworn at on the day of 18 , before me [*person authorised to administer oaths under the Act*].

N. B.—If the signature is in testimonium clause or attestation clause, it must be shown in the affidavit that the testator fully intended the same as his final signature to his will.

No. 8.—*Affidavit for the Commissioners of Inland Revenue.—For Executors.*

In her Majesty's Court of Probate. The District Registry of .

In the goods of *A. B.*, deceased.

The day of 18 .

I *C. D.* of (1) make oath [*or solemnly affirm*] that I am one of the executors [*or the executor*] named in the last will and testament (2) of the said *A. B.*, late of deceased; that the said deceased died on or about the day of in the year of our Lord one thousand hundred and at (3) , and that the said deceased at the time of his death had a fixed place of abode within the said district of , at , and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which a probate of the said will is to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially [*if any leaseholds insert*

clause No. 1. hereon indorsed*], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information, and belief [if no leaseholds insert clause No. 2 hereon indorsed†].

(Signed) C. D.

Sworn at on the day of before me [person authorised to administer oaths under the Act].

(1) Insert the names, residences, and titles, or profession of the persons making the affidavit.

(2) Insert codicils, if any.

(3) Insert place of death, or set forth the reason why the same cannot be furnished.

N.B. Forms for the two leasehold clauses to be printed on the back of the affidavit.

No. 8a.—*Affidavit for the Commissioners of Inland Revenue.—For Administrators with the Will annexed.*

In her Majesty's Court of Probate. The District Registry of

In the goods of A. B., deceased.

The day of 18 .

I C. D. of (1) the party applying for administration with the will (2) annexed of the personal estate and effects of A. B., late of , deceased, make oath [or solemnly affirm], that the said deceased died on or about the day of one thousand hundred and at (3) , and that the said deceased at the time of his death had a fixed place of abode within the said district of at , and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which letters of administration with the said will (2) annexed are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially [if any leaseholds insert clause No. 1 hereon indorsed], and

* *Form of Leasehold Clause No. 1.*

Including the leasehold estate or estates for years of the said deceased, whether absolute or determinable on a life or lives.

† *Form of Leasehold Clause No. 2.*

And I [or we] lastly make oath, that the said deceased was not possessed of or entitled to any leasehold estate or estates for years, whether absolute or determinable on a life or lives, to the best of my [or our] knowledge, information and belief.

without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information, and belief [*if no leaseholds insert clause No. 2 hereon indorsed*]. (Signed) *C. D.*

Sworn at on the day of before me [*person authorised to administer oaths under the Act*].

(¹) Insert the names, residences and titles or professions of the persons making the affidavit.

(²) Insert codicils, if any.

(³) Insert the place of death, or set forth the reason why the same cannot be furnished.

N.B. Forms for the two leasehold clauses to be printed at the back of the affidavit.

No. 8 b.—*Affidavit for the Commissioners of Inland Revenue.—For Administrators.*

In her Majesty's Court of Probate. The District Registry of .

In the goods of *A. B.*, deceased.

The day of 18 .

I *C. D.* of (¹) the party applying for letters of administration of the personal estate and effects of the said *A. B.*, late of make oath [*or solemnly affirm*] and say as follows: That the said deceased died on or about the day of one thousand hundred and at (²) , and at the time of his death had a fixed place of abode within the said district of , at , and that the personal estate and effects of the said deceased which he any way died possessed of or entitled to, and for or in respect of which letters of administration are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person and persons, and not beneficially [*if any leaseholds insert clause No. 1 hereon indorsed*], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information and belief [*if no leaseholds insert clause No. 2 hereon indorsed*].

(Signed) *C. D.*

Sworn at on the day of before me [*person authorised to administer oaths under the Act*].

(¹) Insert the names, residences, and titles or profession of the person making the affidavit.

(?) Insert place of death, or set forth the reason why the same cannot be furnished.

N. B.—Forms for the two leasehold clauses to be printed at the back of the affidavit.

No. 4.—*Oath for Executor.*

In her Majesty's Court of Probate. The District Registry of

In the goods of *A. B.* deceased.

I *C. D.* of in the county of make oath and say [*or solemnly affirm*], that I believe this paper writing [*or these paper writings*] hereto annexed to contain the true and original last will and testament [*or last will and testament with*] codicils of *A. B.* late of in the county of deceased, and that I am the sole executor [*or one of the executors*] therein named [*or executor according to the tenor thereof, executor during life, executrix during widowhood, or as the case may be*] and that I will faithfully administer the personal estate and effects of the said testator by paying his just debts and the legacies contained in his will [*or will and*] codicils, so far as the same shall thereto extend and the law bind me; that I will exhibit an inventory, and render an account of my executorship, whenever required by law so to do; that the testator died at in the county of on the day of 18; and that he had at the time of his death a fixed place of abode at within the said district of; and that the whole of the personal estate and effects of the said testator does not amount in value to the sum of pounds, to the best of my [*or our*] knowledge, information, and belief. (Signed) *C. D.*

Sworn at this day of 18, before me, *E. F.*

Each testamentary paper to be marked by the persons sworn and the person administering the oath.

No. 5.—*Oath for Administrators with the Will.*

In her Majesty's Court of Probate. The District Registry of

In the goods of *A. B.* deceased.

I *C. D.* of in the county of make oath and say [*or solemnly affirm*], that I believe this paper writing [*or these paper writings*] herunto annexed to contain the true and original last will and testament [*or the last will and testament with*

codicils] of *A. B.* late of in the county of deceased, and that the executor therein named is dead without having taken probate thereof [or as the fact may be], and that I am the residuary legatee in trust named therein [or as the fact may be], and that I will faithfully administer the personal estate and effects of the said deceased according to the tenor of his will [or will and codicils] by paying his just debts and the legacies contained in his will [or will and codicils], and distributing the residue of his estate according to law; that I will exhibit an inventory and render an account of my administration whenever required by law so to do; that the testator died at on the day of 18 ; that the said testator at the time of his death had a fixed place of abode at , within the said district of ; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of pounds, to the best of my knowledge, information, and belief. (Signed) *C. D.*
Sworn at this day of 18 , before me, *E. F.*

Each testamentary paper to be marked by the persons sworn and the person administering the oath.

No. 6.—*Oath for Administrators.*

In her Majesty's Court of Probate. The District
Registry of .

In the goods of *A. B.* deceased.

I *C. D.* of in the county of make oath and say [or solemnly affirm], that *A. B.*, late of deceased, died a bachelor, without parent, brother or sister, uncle or aunt, nephew or niece, and intestate, and that I am the lawful cousin german and one of the next of kin of the said deceased [*this must be altered in accordance with the circumstances of the case*]; that I will faithfully administer the personal estate and effects of the said deceased, by paying his just debts, and distributing the residue of his estate according to law; that I will exhibit an inventory and render an account of my administration whenever required by law so to do; that the said deceased died at on the day of 18 ; that at the time of his death he had a fixed place of abode at , within the said district of ; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum

of pounds, to the best of my knowledge, information, and belief. (Signed) A. B.

Sworn at this day of 18 ,
before me, E. F.

No. 7.—*Probate.*

In her Majesty's Court of Probate. The District Registry of .

Be it known, that on the day of 18 the last will and testament [*or the last will and testament with codicils*] hereunto annexed of A. B., late of deceased, who died on or about at , and who at the time of his death had a fixed place of abode at , within the said district of , was proved, and registered in the said district registry of attached to her Majesty's Court of Probate, and that the administration of all and singular the personal estate and effects of the said deceased was granted by the aforesaid court to C. D., the sole executor [*or as the case may be*] named in the said will, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased and the legacies contained in his will [*or will and codicils*] so far as he is thereunto bound by law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F., District Registrar.

Extracted by					
Sworn under £		, and that the	} <i>To be written in the margin of probate.</i>		
testator died on or about the		day of , 18 .			

No. 8.—*Letters of Administration with the Will annexed.*

In her Majesty's Court of Probate. The District Registry of .

Be it known, that A. B., late of in the county of deceased, who died on or about the day of , at , and who at the time of his death had a fixed place of abode at , within the said district of , made and duly executed his last will and testament and did therein name . And be it further known, that on the day of 18 , letters of administration with the said

will annexed of all and singular the personal estate and effects of the said deceased were granted by her Majesty's Court of Probate to *C. D.* [*insert the character in which the grant is taken*], he having previously been sworn well and faithfully to administer the same according to the tenor of the said will to pay the just debts of the said deceased, and to exhibit a true and perfect inventory of all and singular the said personal estate and effects and to render a just and true account thereof whenever required by law so to do.

(Signed) *E. F.*, District Registrar.

Extracted by _____ (L.S.)
Sworn under £ _____ and that the testator died on or
about the _____ day of _____ 18 _____.

No. 9.—*Letters of Administration.*

In her Majesty's Court of Probate. The District Registry of _____.

Be it known, that on the _____ day of _____ 18 _____, letters of administration of all and singular the personal estate and effects of *A. B.*, late of _____ deceased, who died on or about _____ 18 _____, at _____ intestate, and had at the time of his death a fixed place of abode at _____, within the said district of _____, were granted by her Majesty's Court of Probate to *C. D.* of _____ the widow [*or as the case may be*] of the said intestate, she having been first sworn well and faithfully to administer the same, by paying his just debts, and distributing the residue of his personal estate and effects according to law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

(Signed) *E. F.*, District Registrar.

Extracted by _____ (L.S.)

Sworn under £ _____, and that the } *To be written in*
intestate died on or about the } *margin of admi-*
day of _____, 18 _____ } *nistration will.*

No. 10.—*Double Probate.*

In her Majesty's Court of Probate. The District Registry of _____.

Be it known, that on the _____ day of _____ 18 _____, the last will and testament [*or the last will and testament with _____ codicils*] of *A. B.*, late of _____ deceased, who died on or about _____, at _____, and

had at the time of his death a fixed place of abode at , within the said district of , was proved and registered, and that administration of all and singular the personal estate and effects of the said deceased, and any way concerning his will, was granted to C. D., one of the executors named in the said will [or codicil], he having been already sworn well and faithfully to administer the same, and to make a true and perfect inventory of all the said personal estate and effects, and to render a just and true account thereof whenever required by law so to do, power being reserved of making the like grant to E. F., the other executor named in the said will, when he should apply for the same. And be it further known, that on the day of 18 , the said will of the said deceased was also proved, and that the like administration of all and singular the personal estate and effects of the said deceased, and any way concerning his will, was granted to the said E. F., he having been first duly sworn well and faithfully to administer the same, and to make a true and perfect inventory of the personal estate and effects of the said deceased, and to render a just account thereof whenever required by law so to do.

(Signed) G. H., District Registrar.

Extracted by (L.A.)
Sworn under £ , and that the
testator died on or about the
day of 18 .
Former grant, Jan. 18 , under the same sum.

No. 11.—*Exemplification of Probate or Letters of Administration with Will annexed.*

In her Majesty's Court of Probate. The District Registry of .

Be it known, that upon search being made in the district registry of attached to her Majesty's Court of Probate, it plainly appears that on the day of , in the year of our Lord 18 , the last will and testament with codicils of A. B., late of , deceased, who died at on or about and had at the time of his death a fixed place of abode at within the said district of , was proved by C. D., the executor named therein [or letters of administration with the last will and testament [and codicils] annexed of the personal estate and effects of A. B., late of, &c., were granted to C. D., as the], and which probate [or letters of administration now remain] now remains of record in the said registry. The

true tenor of the said probate [or letters of administration with the will annexed, *as the case may be*] is in the words following, to wit:

[*Here the grant is to be recited verbatim.*]

In faith and testimony whereof these letters testimonial are issued.

Given at as to the time of the aforesaid search,
and the sealing of these presents, this day of
 , in the year of our Lord 18 .

(Signed) E. F., District Registrar.

Extracted by (L.S.)

Sworn under £ , and that the
testator died on the day
of 18 .

No. 12.—*Exemplification of Administration.*

In her Majesty's Court of Probate. The District
Registry of .

Be it known, that upon search being made in the district registry of attached to her Majesty's Court of Probate, it appears that on the day of in the year of our Lord 18 , letters of administration of all and singular the personal estate and effects of A. B., late of , who died at on or about , and had at the time of his death a fixed place of abode at within the said district of , were granted to C. D., the [or one of the] of the said deceased, and which letters of administration now remain of record in the said registry. The true tenor of the said letters of administration is in the words following, to wit:

[*Here the letters of administration are to be recited verbatim.*]

In faith and testimony whereof these letters testimonial are issued.

Given at as to the time of the aforesaid
search, and sealing of these presents, this day of in the year of our Lord 18 .

(Signed) K. L., District Registrar.

Extracted by (L.S.)
Sworn under £ , and that the intestate died on
the day of , 18 .

No. 13.—*Special Administration with the Will of a Married Woman annexed.*

In her Majesty's Court of Probate. The District
Registry of .

Be it known, that A. B., wife of C. B., late of

in the county of , died on the day of 18 , at , having at the time of her death a fixed place of abode at within the said district of , and having during her coverture with the said *C. B.*, by virtue of certain powers and authorities given to and vested in her by a certain indenture of settlement bearing date the day of 18 , and of all other powers and authorities her enabling, made and executed her last will and testament bearing date the day of 18 , and thereof appointed her said husband, the said *C. B.*, sole executor, and that the said *C. B.*, as the lawful husband of the said deceased, is the sole person entitled to her personal estate and effects, over which she had no disposing power, and concerning which she is dead intestate. And be it also known, that on the day of 18 letters of administration (with the said will annexed) of all and singular the personal estate and effects of the said deceased were granted and committed by her Majesty's Court of Probate to the said *C. B.*, on his giving the usual security, he having been first sworn well and faithfully to administer the same, to pay whatever debts the said deceased at the time of her death did owe, and to exhibit a true and perfect inventory of all and singular her personal estate and effects, and to render a just account thereof whenever required by law so to do.

(Signed) *J. S.*, District Registrar.

Extracted by

(L. S.)

Sworn under 100*l*., and that the testatrix died on the day of 18 .

No. 13 a.—*Limited Probate of a Married Woman's Will.*

In her Majesty's Court of Probate. The District Registry of .

Be it known, that *A. B.*, wife of *C. B.*, late of in the county of died on the day of 18 , at , having at the time of her death a fixed place of abode at within the said district of , and having during her coverture with the said *C. B.*, by virtue of certain powers and authorities vested in her by a certain indenture of settlement, bearing date the day of 18 , and made between *E. F.* of in the county of esquire, of the first part, the said deceased, by her then name and description of *A. G.* of in the county of spinster, of the second part, and *H. I.* of in the same county, gentleman, and the said

C. B. of aforesaid, of the third part, made and executed her last will and testament, bearing date the day of one thousand eight hundred and and thereof appointed L. M. and O. P. executors.

And be it also known, that on the day of 18, the said last will and testament of the said A. B., hereunto annexed, was proved and registered in the said district registry of attached to her Majesty's Court of Probate, and that probate of the said will of the said deceased, limited to the administration of all such personal estate and effects as she the said deceased by virtue of the aforesaid indenture had a right to appoint or dispose of, and has in and by her said will appointed or disposed of accordingly, but no further or otherwise, was granted to the said L. M., one of the executors named in the said will as aforesaid, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased, and the legacies contained in her said will, as far as he is thereunto bound by law, and to exhibit a true and perfect inventory of the said limited estate and effects, and to render a just and true account thereof whenever required by law so to do. Power being reserved of making a like grant of probate to the said O. P., the other executor, when he shall apply for the same.

(Signed) J. S., District Registrar.

Extracted by (L. S.)
Sworn under £, and that the
testator died on the day
of, 18.

No. 14.—*Special Administration of the rest of the Goods of a Married Woman.*

In her Majesty's Court of Probate. The District Registry of

Be it known, that A. B. [wife of C. B.], late of in the county of, died on the day of 18, at, having at the time of her death a fixed place of abode at, within the said district of, and having during her coverture with the said C. B., by virtue of certain powers and authorities vested in her by a certain indenture bearing date the day of 18, and made between D. E. of in the county of esquire, of the first part, the said C. B., therein described, of in the county of gentleman, of the second part, and the said A. B. by her then name and description of A. F. of in the county of widow, and

G.H. of the same place, esquire, of the third part, made and executed her last will and testament, bearing date the day of 18 , and thereof appointed *E.F.* and *G.H.* executors. And be it also known, that on the day of 18 , probate of the said will, limited to the administration of all such personal estate and effects as she the said deceased, by virtue of the said indenture, had a right to appoint or dispose of, and hath in and by her said will appointed or disposed of accordingly, but no further or otherwise, was granted by authority of to the said *E.F.* and *G.H.*, the executors named in the said will. And be it further known, that on the day of 18 , letters of administration of the rest of the personal estate and effects of the said *A.B.* deceased were granted to the said *C.B.*, the lawful husband of the said deceased, he having been first sworn faithfully to administer the same, and to exhibit a true and perfect inventory thereof, and also to render a just and true account thereof whenever required by law so to do.

(Signed) *R.S.*, District Registrar.

Extracted by (L.S.)
Sworn under £ , and that the
deceased died on the day
of 18 .

No. 15. *Administration de Bonis non.*

In her Majesty's Court of Probate. The District
Registry of .

Be it known, that *A.B.*, late of in the county
of deceased, died on or about 18 , at
Intestate, and had at the time of his death
a fixed place of abode at , within the said district
of , and that since his death, to wit, in
the month of 18 , letters of administration of
all and singular his personal estate and effects were
committed and granted to *C.D.* [*insert the relationship or character of administrator*] (which
letters of administration now remain of record in
the district registry of), who, after taking
such administration upon him, intermeddled in the
personal estate and effects of the said deceased,
and afterwards died, to wit, on , leaving part
thereof unadministered, and that on the day of
18 , letters of administration of the said
personal estate and effects so left unadministered were
granted by her Majesty's Court of Probate to ,
he having been first sworn well and faithfully to ad-

minister the same, to pay his just debts, and exhibit a true and perfect inventory of the said personal estate and effects so left unadministered, and render a just and true account thereof whenever required by law so to do. (Signed) E. F., District Registrar.

Extracted by _____ (L.S.)
Sworn under £ _____, and that the } To be written in
intestate died on the _____ day } margin of admi-
of _____, 18 . } nistration will.

No. 16.—Administration Bond.

Know all men by these presents, that we, A. B. of _____, C. D. of _____, and E. F. of _____, are jointly and severally bound unto G. H., the judge of her Majesty's Court of Probate, in the sum of _____ pounds of good and lawful money of Great Britain, to be paid to the said G. H. or to the judge of the said court for the time being, for which payment well and truly to be made we bind ourselves and _____ of us for the whole, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the _____ day of _____ in the year of our Lord one thousand eight hundred and _____.

The condition of this obligation is such, that if the above-named A. B., the [as the case may be] of I. J., late of _____ deceased, who died on the _____ day of _____ do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased which have or shall come to hands, possession, or knowledge, or into the hands and possession of any other person for _____, and the same so made do exhibit or cause to be exhibited into the district registry of _____ attached to her Majesty's Court of Probate, whenever required by law so to do, and the same personal estate and effects, and all other the personal estate and effects of the said deceased at the time of _____ death, which at any time after shall come to the hands or possession of the said _____, or into the hands or possession of any other person or persons for _____, do well and truly administer according to law; (that is to say), do pay the debts which _____ did owe at _____ decease, and further do make or cause to be made a true and just account of _____ said administration whenever required by law so to do; and all the rest and residue of the said personal estate and effects to deliver and pay unto such person or persons as shall be entitled

thereto, under an Act of Parliament intituled "An Act for the better settling of intestate estates;" and if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors therein named do exhibit the same into the said court, making request to have it allowed and approved accordingly, if the said , being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said court, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed, and delivered in the presence of

L. K., Commissioner,

M. N., District Registrar of ,

O. P., clerk to the District Registrar of .]

No. 17.—*Administration Bond for Administrators with the Will.*

Know all men by these presents, that we, *A. B.*, of , *C. D.* of , and *E. F.* of , are jointly and severally bound unto *G. H.*, the judge of her Majesty's Court of Probate, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said *G. H.*, or to the judge of the said court for the time being, for which payment well and truly to be made we bind ourselves and of us for the whole, our heirs, executors and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and .

The condition of this obligation is such that if the above-named *A. B.*, the [*as the case may be*] of *I. J.*, late of deceased, who died on the day of do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased which have or shall come to hands, possession, or knowledge, and the same so made do exhibit or cause to be exhibited into the district registry of attached to her Majesty's Court of Probate, whenever required by law so to do, and the same personal estate and effects do well and truly administer, (that is to say,) do pay the debts of the said deceased which did owe at decease, and then the legacies contained in the said will annexed to the said letters of administration so to

committed, as far as personal estate and effects
will thereto extend, and the law charge
and further do make or cause to be made a true and
just account of said administration when
shall be thereunto lawfully required, and all the rest
and residue of the said personal estate and effects
shall deliver and pay unto such person or persons as
shall be by law entitled thereto, then this obligation
to be void and of none effect, or else to remain in full
force and virtue.

Signed, sealed, and delivered in the presence of

K. L., Commissioner,

M. N., District Registrar of ,

[or

O. P., clerk to the District Registrar of .]

No. 18.—*Declaration of the Personal Estate and Effects of a Testator or an Intestate.*

A true declaration of all and singular the personal estate and effects of A.B., late of , deceased, who died on the day of at , and had at the time of his death a fixed place of abode at within the district of , which have at any time since his death come to the hands, possession, or knowledge of C.D., the administrator with the will of the said A.B. [or administrator, as the case may be], made and exhibited upon and by virtue of the corporal oath [or solemn affirmation] of the said C.D., as follows, to wit:

First, this declarant declares that the said deceased was at the time of his death possessed of or entitled to - - - - -	£	s.	d.
[The details of the deceased's effects must be here inserted, and the value inserted opposite to each particular.]	|	|	|

Lastly, this declarant saith, that no personal estate or effects of or belonging to the said deceased have at any time since his death come to the hands, possession, or knowledge of this declarant, save as is hereinbefore set forth. (Signed) C.D.

On the day of 18 the said C.D. was duly sworn to [or solemnly affirmed] the truth of the above inventory, Before me,

[person authorised to administer oaths under the Act.]

No. 19.—*Justification of Sureties.*

In her Majesty's Court of Probate. The District
Registry of

In the goods of *A.B.* deceased.

The day of 18 .

We, *C.D.* of and *E.F.* of ,
jointly and severally make oath, that we are the pro-
posed sureties on behalf of *G.H.*, the intended admin-
istrator of all and singular the personal estate and
effects of the said *A.B.*, late of deceased, in
the penal sum of pounds, for his faithful admin-
istration of the said personal estate and effects of the
said deceased; and I the said *C.D.* for myself
make oath, that I am, after payment of all my just
debts, well and truly worth in money and effects the
sum of ; and I the said *E.F.* for myself
make oath, that I am, after payment of all my just
debts, well and truly worth in money and effects the
sum of pounds.

Same day the said *C.D.*
and *E.F.* were duly
sworn to the truth of this
affidavit.

Before me,

[*person authorised to administer oaths under the Act.*]

No. 20.—*Election by Minors of a Guardian.*

In her Majesty's Court of Probate. The District
Registry of

Whereas *A.B.*, late of in the county of
deceased, died on or about the day of 18 ,
at intestate, a widower, leaving *C.D.*, *E.F.*,
and *G.H.* his natural and lawful children and only
next of kin, the said *C.D.* being a minor of the age
of twenty years only, the said *E.F.* being also a minor
of the age of nineteen years only, and the said *G.H.*
being an infant of the age of six years only:

Now we, the said *C.D.* and *E.F.*, do hereby make
choice of and elect *K.L.* of in the county of
our lawful maternal uncle and one of our next of
kin, to be our curator or guardian, for the purpose of his
obtaining letters of administration of the personal
estate and effects of the said *A.B.* deceased to be
granted to him, for our use and benefit, and until one
of us attain the age of twenty-one years [or
for the purpose of renouncing for us, and on our
behalf all our right, title, and interest to and in the

letters of administration, &c. as the case may be] [*add, in cases where a proctor, solicitor or attorney appears for the minors, and we hereby appoint M.N. of our proctor, solicitor, or attorney, to file or cause to be filed this our election for us in the said district registry of attached to her Majesty's Court of Probate.*]

In witness whereof we have hereunto set our hands and seals this day of in the year 18 .

Signed, sealed, and delivered in the presence of
[*One disinterested witness sufficient.*]

No. 21.—*Renunciation of Probate and Administration with the Will annexed.*

In her Majesty's Court of Probate. The District Registry of .

Whereas A.B., late of in the county of deceased, died on the day of 18 , at and had at the time of his death a fixed place of abode at within the said district of , and whereas he made and duly executed his last will and testament bearing date the day of 18 ⁽¹⁾, and thereof appointed C.D. executor and residuary legatee in trust [*or as the case may be*]:

Now I, the said C.D. do hereby declare, that I have not intermeddled in the personal estate and effects of the said deceased, and will not hereafter intermeddle therein with intent to defraud creditors, and I do hereby expressly renounce all my right and title to the probate and execution of the said will [*and codicils, if any*], and to the letters of administration with the said will [*and codicils, if any*], annexed, of the personal estate and effects of the said deceased [*add, in cases where a proctor, solicitor, or attorney appears for the person renouncing, and I hereby appoint E.F. of my proctor, solicitor, or attorney, to file or cause to be filed this renunciation for me in the said district registry of attached to her Majesty's Court of Probate.*]

In witness whereof I have hereto set my hand and seal, this day of 18 . C.D.

Signed, sealed, and delivered by the said C.D. in the presence of G.H.

[*One disinterested witness sufficient.*]

⁽¹⁾ If there are codicils their dates should be also inserted.

No. 22.—*Renunciation of Administration.*

In her Majesty's Court of Probate. The District Registry of .

Whereas *A. B.*, late of in the county of deceased, died on the day of 18 , at intestate, a widower, and had at the time of his death a fixed place of abode at within the said district of ; and whereas I, *C. D.* of , am his natural lawful child, and his only next of kin :

Now I, the said *C. D.* , do hereby declare that I have not intermeddled in the personal estate and effects of the said deceased, and do hereby expressly renounce all my right and title to the letters of administration of the personal estate and effects of the said deceased [*add in cases where a proctor, solicitor, or attorney appears for the person renouncing, and I hereby appoint E. F. of my proctor, solicitor, or attorney, to file or cause this renunciation to be filed for me in the district registry of attached to her Majesty's Court of Probate*].

In witness whereof I have hereto set my hand and seal, this day of 18 . *C. D.*

Signed, sealed, and delivered by the said *C. D.* in the presence of *G. H.*

[*One disinterested witness sufficient.*]

This to be varied according to the fact.

No. 23.—*Subpoena in a Proceeding in Common Form to bring in a Script.*

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To of

Whereas it appears by a certain affidavit filed in the principal registry of our Court of Probate [*or filed in the district registry of attached to our Court of Probate*], bearing date the day of 18 , and made by of , that a certain original paper or script, being or purporting to be testamentary, to wit [*here describe the paper*], bearing date the day of 18 , is now in your possession or under your control :

Now this is to command you, that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the principal registry of our said court [*or the district registry of attached to our said court*] the said

original paper now in the possession of you the said , or in case the said original paper be not in your possession or under your control, that you, within eight days after the service hereof on you, inclusive of the day of such service, do file in the principal registry of our said court [or the district registry of attached to our said court], an affidavit to that effect, and therein set forth what knowledge you have of and respecting the said script: and this you shall in no wise omit under the penalty of one hundred pounds. Witness [insert the name of the judge], at the Court of Probate, the day of 18 , in the year of our reign.

Indorsement to be made of the service.

This subpoena was served by G. H. on day of 18 .
(Signed) G. H.

No. 24.—*Affidavit of Handwriting.*

In her Majesty's Court of Probate. The District Registry of .

I A. B. of in the county of make oath [or solemnly affirm], that I knew and was well acquainted with C. D., late of in the county of deceased, who died on the day of at , and had at the time of his death a fixed place of abode at within the said district of , for many years before and down to the time of his death, and that during such period I have frequently seen him write and also subscribe his name to writings, whereby I have become well acquainted with his manner and character of handwriting and subscription, and having now with care and attention perused and inspected the paper writing hereunto annexed, purporting to be and contain the last will and testament of the said deceased, beginning thus ending thus and being subscribed thus ⁽¹⁾ "C. D." I further make oath, that I verily and in my conscience believe the whole body, series, and contents of the said will, together with the names "C. D." subscribed thereto as aforesaid, to be of the true and proper handwriting and subscription of the said "C. D." deceased.

On the day of 18 the said A. B. was duly sworn at to the truth of this affidavit [or made this solemn affirmation],

Before me, E. F.

[person authorised to administer oaths under the Act.]

⁽¹⁾ Include in these recitals the date of the will.

No. 25.—*Affidavit of Plight and Condition and Finding.*

In her Majesty's Court of Probate. The District Registry of .

I *A.B.*, of in the county of , make oath [or solemnly affirm], that I am the sole executor named in the paper writing now hereunto annexed, purporting to be and contain the last will and testament of *E.F.*, late of in the county of deceased (who died on the day of at) and had at the time of his death a fixed place of abode at within the said district of , the said will bearing date the day of beginning thus ending thus and being subscribed thus "*C.D.*," and having viewed and perused the said will, and particularly observed that [here recite the finding of the will, and the various obliterations, interlineations, erasures, and alterations (if any), and the general plight and condition of the will, or any other matters requiring to be accounted for, and clearly trace the will from the possession of the deceased in his lifetime up to the time of making this affidavit]; I the deponent lastly make oath that the same is now in all respects in the same state, plight and condition as when found [or as the case may be].

On the day of 18 the said *A.B.* and *C.D.* were duly sworn at to the truth of this affidavit [or made this solemn affirmation before me]. *I.J.*

[person authorised to administer oaths under the Act.]

No. 26.—*Affidavit of Search.*

In her Majesty's Court of Probate. The District Registry of .

I *A.B.*, of in the county of , make oath [or solemnly affirm] that I am the sole executor named in the paper writing hereunto annexed, purporting to be and contain the last will and testament of *C.D.*, late of deceased, who died on the day of in the year 18 , at , and had at the time of his death a fixed place of abode at within the said district of , the said will beginning thus, " , " ending thus, "In witness whereof, I have hereunto set my hand this day of in the year of our Lord one thousand eight hundred and fifty-four" [or as the case may be], and being thus subscribed, "*C.D.*" And referring particularly to the fact that the blank spaces originally left in the said will for the insertion of the day and month of the date thereof have never been sup-

plied [or that the said will is without date, or as the case may be], I further make oath [or solemnly affirm] that I have made inquiry of *E. F.*, the solicitor of the said deceased, and that I have also made diligent and careful search in all places where he the said deceased usually kept his papers of moment and concern, and in his depositories, in order to ascertain whether he had or had not left any other will, but that I have been unable to discover any such will. And I lastly make oath [or solemnly affirm], that I verily believe the said deceased died without having left any will, codicil or testamentary paper whatever other than the said will by me hereinbefore deposed of. *A. B.*

On the day of 18 the said *A. B.*
was duly sworn at to the truth of this affi-
davit [or made this solemn affirmation] before
me, *G. H.*

[*person authorised to administer oaths under the Act.*]

This form of affidavit to be used when it is shown by affidavit that neither the subscribed witnesses nor any other person can depose to the precise time of the execution of the will.

No. 27.—*Caveat.*

In her Majesty's Court of Probate. The District
Registry of .

Let nothing be done in the goods of *A. B.*, late of
deceased, who died on the day of
at , and had at the time of his death a fixed
place of abode at within the said district
of , unknown to *C. D.* of having interest
[or to *E. F.* of the proctor, solicitor, or attorney of
parties having interest].

Dated this day of 18
(Signed) *C. D.* of [or *E. F.* of
the proctor, solicitor, or attorney of parties
having interest].

No. 28.—*Warning to Caveat.*

In her Majesty's Court of Probate. The District
Registry of .

To *A. B.* of [or to *C. D.* of proctor,
solicitor, or attorney of parties having
interest].

You are hereby warned, within six days after the
service of this warning upon you, inclusive of the day
of such service, to cause an appearance to be entered
for you in the said district registry attached to the

said Court of Probate to the caveat entered by you in the personal estate and effects of *E.F.*, late of deceased, who died at on or about the day of 18 , and had at the time of his death a fixed place of abode at within the said district of , and to set forth your (or your client's) interest; and take notice, that in default of your so doing the said court will proceed to do all such acts, matters and things as shall be needful and necessary to be done in and about the premises.

(Signed) *X.Y.*, District Registrar.

Indorsement to be made after Service.

This warning was served by *I.K.* on *A.B.* of [or on *C.D.* of the proctor, solicitor, or attorney] by whom the caveat was entered in respect of the personal estate and effects of the within-named deceased at on the day of 18 .
(Signed) *I.K.*

[or, The duplicate of this warning signed by the said *X.Y.*, was sent by the public post, directed to the said *A.B.* [or *C.D.*] by whom the caveat was entered in respect of the personal estate and effects of the within-named deceased at on the day of 18 .
(Signed) *I.K.*

Note.—These six days are to be exclusive of Sunday.

FEEES

To be taken in the District Registries of the Court of Probate.

Probates or Letters of Administration with Will annexed.

For every probate when the personal estate £ s. d.
is sworn to be under 100*l.*, or any sum less than 100*l.*..... 0 1 0

For every probate when the personal estate is of the value of 100*l.* and under 4000*l.*, or any sum less than 4000*l.*, a fee of 1*s.* 6*d.* in the pound on the amount of stamp duty payable on such probate.

For every probate when the personal estate is of the value of 4000*l.* and upwards, the following fees:—

If the personal estate is sworn to be—
Under the value of ...£5000 4 15 0
" 6000 5 0 0
" 7000 5 5 0
" 8000 5 10 0
" 9000 5 15 0

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	£	s.	d.
Under the value of ...£10,000	6	0	0
" 12,000	6	5	0
" 14,000	6	10	6
" 16,000	6	17	6
" 18,000	7	5	0
" 20,000	7	12	6
" 25,000	8	2	0
" 30,000	8	15	6
" 35,000	9	7	3
" 40,000	10	6	0
" 45,000	11	5	9
" 50,000	12	3	6
" 60,000	13	2	0
" 70,000	15	0	6
" 80,000	16	17	0
" 90,000	18	15	6
" 100,000	20	12	3
" 120,000	21	11	9
" 140,000	23	8	3
" 160,000	25	6	9
" 180,000	27	3	3
" 200,000	29	1	9
" 250,000	30	18	6
" 300,000	35	12	3
" 350,000	40	6	6
" 400,000	41	17	9
" 500,000	43	8	3
" 600,000	46	6	9
" 700,000	49	13	3
" 800,000	52	16	9
" 900,000	55	18	3
" 1,000,000	59	1	3
" Above 1,000,000	62	8	9
For registering and collating wills, of three folios of ninety words each, or under ...	0	4	6
If above three folios of ninety words each, per folio	0	1	6
In cases of a grant for Queen's pay or prize money, the effects being under 100 <i>l.</i> , without reference to the length of the will	0	4	6
For engrossing and collating a will for a double, or duplicate, or triplicate, or cessate probate, of the will is four folios of ninety words each or under, including parchment	0	6	0
If above four folios of ninety words each, including parchment, per folio	0	1	6
For every double or cessate probate, when the personal estate is under 450 <i>l.</i> or any			

smaller sum, the same fee as on the first probate.	£	s.	d.
For every double or cessate probate, when the personal estate is of the value of 450 <i>l.</i> or upwards...	0	12	6
For every duplicate and triplicate probate, when the personal estate is under 450 <i>l.</i> or any smaller sum, the same fee as on the first probate.			
For every duplicate and triplicate probate, when the personal estate is of the value of 450 <i>l.</i> or upwards...	0	12	6
For engrossing, exemplifying and collating a will of four folios of ninety words each or under, including parchment...	0	6	0
If above four folios of ninety words each, per folio, including parchment...	0	1	6
For every exemplification of probate...	1	1	0

Letters of Administration.

For every grant of letters of administration, when the personal estate is sworn to be under 100 <i>l.</i> , or any sum less than 100 <i>l.</i> , a fee of...	0	1	0
For every grant of letters of administration, when the personal estate is of the value of 100 <i>l.</i> and under 2000 <i>l.</i> , or any sum less than 2000 <i>l.</i> , a fee of 1 <i>s.</i> 6 <i>d.</i> in the pound on the amount of stamp duty payable on such letters of administration.			
For every grant of letters of administration, when the personal estate is of the value of 2000 <i>l.</i> and upwards, the following fees:			
If the personal estate is sworn to be—			

Under the value of ...£3000	4	18	9
" 4000	4	17	6
" 5000	5	5	0
" 6000	5	12	6
" 7000	6	0	0
" 8000	6	7	6
" 9000	6	15	0
" 10,000	7	2	6
" 12,000	7	10	0
" 14,000	7	17	6
" 16,000	8	8	9
" 18,000	9	0	0
" 20,000	9	11	3
" 25,000	9	16	3
" 30,000	11	5	0
" 35,000	12	3	9
" 40,000	13	11	3

	£	s.	d.
Under the value of ... £45,000	15	0	0
" 50,000	16	7	6
" 60,000	17	16	3
" 70,000	20	12	6
" 80,000	23	8	9
" 90,000	26	5	0
" 100,000	29	1	3
" 120,000	30	9	6
" 140,000	33	5	9
" 160,000	36	2	0
" 180,000	38	18	3
" 200,000	41	14	6
" 250,000	44	10	3
" 300,000	46	17	6
" 350,000	49	4	6
" 400,000	51	11	3
" 500,000	53	18	3
" 600,000	58	12	0
" 700,000	63	5	9
" 800,000	67	19	6
" 900,000	72	18	3
" 1,000,000	77	7	0
" Above 1,000,000	82	0	9

For every duplicate and triplicate letters of administration when the personal estate is under 300*l*. or any sum less than 300*l*., the same fee as on the first grant of letters of administration.

For every duplicate and triplicate letters of administration when the personal estate is of the value of 300*l*. and upwards ... 0 12 6

For every exemplification of letters of administration ... 1 1 0

For every grant of letters of administration with will annexed de bonis non or cessate when the personal estate is under 450*l*. or any smaller sum, the same fee as on the first grant.

For every grant of letters of administration with will annexed de bonis non or cessate, when the personal estate is of the value of 450*l*. and upwards ... 0 12 6

For engrossing and collating a will for a grant of letters of administration with will annexed de bonis non or cessate, if the will is four folios of ninety words each or under, including parchment ... 0 6 0

If above four folios of ninety words each, per folio, including parchment ... 0 1 6

For every grant of letters of administration de bonis non or cessate, if the personal estate is under 800 <i>l.</i> or any smaller sum, the same fee as on the first grant.	£	s.	d.
For every grant of letters of administration de bonis non or cessate, if the personal estate is of the value of 800 <i>l.</i> and upwards	...	...	...
	0	12	6
For every special or limited grant of probate or letters of administration with or without the will annexed, in addition to the ordinary fees, as under:			
If the personal estate is under the value of 20 <i>l.</i> , 1 <i>s.</i> per folio of 90 words each on the bond, on the act, and on the grant of probate or letters of administration.			
If the personal estate is of the value of 20 <i>l.</i> and upwards, 2 <i>s.</i> per folio of ninety words each on the bond, on the act, and on the grant of probate or letters of administration.			
For articles entered into by administrators to pay creditors <i>pro rata</i> , per folio of ninety words each	...	...	...
	0	2	0
For the bond for the performance of the articles, per folio of ninety words	...	...	...
	0	2	0
For noting on the grant of letters of administration with or without will annexed, and on the act, that additional security has been given	...	...	...
	0	5	0
For every certificate that additional security has been given	...	...	...
	0	1	0
For every search for will or grant of letters of administration or any other document filed in the district registry, including the looking up and inspecting an original will before the same is registered, or a registered copy of a will or an administration act	...	...	...
	0	1	0
For every third will or administration act looked up in addition to the above	...	...	...
	0	1	0
For looking up and inspecting an original will after the same is registered in addition to the search	...	...	...
	0	1	0
For looking up and producing any document filed in the district registry other than an original will or administration act	...	...	...
	0	1	0
For every office copy or extract of a record, will, or probate, or administration act,			

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or other document filed in the district registry, if five folios of 90 words or under	£	s.	d.
If exceeding five folios of ninety words per folio	0	2	6
If the will or other document is 200 years old and five folios of 90 words or under...	0	0	6
If exceeding five folios of ninety words per folio	0	5	0
If the office copy of a will or any part of a will or other document is required to be made fac simile, and such will or part of a will or other document is five folios of ninety words in length or under...	0	0	9
If exceeding five folios of ninety words, per folio	0	3	6
For collating a probate or copy of a will or other document left in place of the original, if twenty folios in length or under	0	0	9
If exceeding twenty folios, every additional two folios	0	5	0
If a copy is required to be printed, for every eight folios of ninety words (in addition to a manuscript copy for the printer, at 6d. per folio of ninety words)	0	0	8
For every attendance with any book or original document within three miles of the district registry	0	5	0
For second and each subsequent attendance at the same place, and with the same document if within fourteen days ...	1	1	0
For each day's attendance with any book or original document at any place beyond the distance of three miles from the district registry, exclusive of travelling expenses	0	10	6
For every receipt for a document or documents delivered out of the district registry	1	1	0
For the entry of every caveat	0	1	0
For each notice of such caveat to the principal registry or any other district registry	0	1	0
For every warning to a caveat issuing from the district registry	0	5	0
For messenger's attendance with warning to caveat within three miles of the district registry	0	2	6
For every notice of application for a grant of probate or administration transmitted to registrars of the principal registry ...	0	1	0
For filing each of such notices in the principal registry	0	0	6

For every search by the district registrar in order to ascertain whether any probate or grant of letters of administration has already issued as under:—

For every year after the year in which the deceased died	0	0	6
And for every such search in the principal registry after the year in which the deceased died, a further fee of	0	0	6
For the certificate of the registrar of the principal registry, that no application has been made in respect of the goods of the deceased	0	1	0
For filing affidavit for the Inland Revenue Office on granting probate or letters of administration for Queen's pay or prize money	0	1	0
For filing every other affidavit and other document brought into and deposited in the district registry, except the oaths for executors or administrators, or administrators with will, the first administration bond, and the testamentary papers in respect of which probate or administration with will annexed is granted	0	2	6
For every receipt for documents left in the district registry in order to obtain a grant of probate or letters of administration with or without will annexed	0	1	0
For depositing every will of a person deceased in the district registry, for safe custody	0	10	0
For every oath administered by the district registrars	0	1	0

FEES.

To be taken for their own use by Proctors, Solicitors, and Attorneys practising in the Court of Probate and in the District Registries thereof, in Non-Contentious Business.

Fees of Letters of Administration with Will annexed.

In addition to the fees for attendance on execution of the bond, if the effects are—	£	s.	d.
5l. and under 20l.	0	0	10
20l. and under 100l.	0	1	8
100l. and upwards	0	8	4

Fees of Letters of Administration.

Effects sworn under.	Oath of Administrator and attendance on his being sworn, and on execution of the bond.	Affidavit for Island Revenue and attendance on Administrator being sworn.	Letters of Administration under seal.	Extracting.	Clerk.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5..	0 2 6	0 2 6	0 1 0	0 1 0	—
20..	0 3 4	0 2 6	0 1 0	0 3 4	0 1 0
50..	0 5 0	0 5 0	0 1 6	0 4 8	0 2 0
100..	0 6 8	0 6 8	0 3 0	0 6 8	0 2 0
200..	0 10 0	0 6 8	0 4 6	0 6 8	0 2 0
300..	0 13 4	0 10 0	0 12 0	0 6 8	0 2 0
450..	0 13 4	0 10 0	0 16 6	0 6 8	0 2 0
600..	0 13 4	0 10 0	1 2 6	0 6 8	0 2 0
800..	0 13 4	0 10 0	1 13 0	0 6 8	0 2 0
1,000..	0 13 4	0 10 0	2 5 0	0 6 8	0 5 0
1,500..	0 13 4	0 10 0	3 7 6	0 6 8	0 5 0
2,000..	0 13 4	0 10 0	4 10 0	0 13 4	0 5 0
3,000..	0 13 4	0 10 0	4 13 9	0 13 4	0 7 6
4,000..	0 13 4	0 10 0	4 17 6	0 13 4	0 7 6
5,000..	0 13 4	0 10 0	5 5 0	0 13 4	0 7 6
6,000..	0 13 4	0 10 0	5 12 6	0 13 4	0 7 6
7,000..	0 13 4	0 10 0	6 0 0	0 13 4	0 7 6
8,000..	0 13 4	0 10 0	6 7 6	0 13 4	0 7 6
9,000..	0 13 4	0 10 0	6 15 0	0 13 4	0 7 6
10,000..	0 13 4	0 10 0	7 2 6	0 13 4	0 7 6
12,000..	0 13 4	0 10 0	7 10 0	0 13 4	0 7 6
14,000..	0 13 4	0 10 0	7 17 6	0 13 4	0 7 6
16,000..	0 13 4	0 10 0	8 8 9	0 13 4	0 7 6
18,000..	0 13 4	0 10 0	9 0 0	0 13 4	0 7 6
20,000..	0 13 4	0 10 0	9 11 3	0 13 4	0 7 6
25,000..	0 13 4	0 10 0	9 16 3	0 13 4	0 7 6
30,000..	0 13 4	0 10 0	11 5 0	0 13 4	0 7 6
35,000..	0 13 4	0 10 0	12 3 9	0 13 4	0 7 6
40,000..	0 13 4	0 10 0	13 11 3	0 13 4	0 7 6
45,000..	0 13 4	0 10 0	15 0 0	0 13 4	0 7 6
50,000..	0 13 4	0 10 0	16 7 6	0 13 4	0 7 6
60,000..	0 13 4	0 10 0	17 16 3	0 13 4	0 7 6
70,000..	0 13 4	0 10 0	20 12 6	0 13 4	0 7 6
80,000..	0 13 4	0 10 0	23 8 9	0 13 4	1 1 0
90,000..	0 13 4	0 10 0	26 5 0	0 13 4	1 1 0
100,000..	0 13 4	0 10 0	29 1 3	0 13 4	1 1 0
120,000..	0 13 4	0 10 0	30 9 6	0 13 4	1 1 0
140,000..	0 13 4	0 10 0	33 5 9	0 13 4	1 1 0
160,000..	0 13 4	0 10 0	36 2 0	0 13 4	1 1 0
180,000..	0 13 4	0 10 0	38 18 3	0 13 4	1 1 0
200,000..	0 13 4	0 10 0	41 14 6	0 13 4	1 1 0
250,000..	0 13 4	0 10 0	44 10 9	0 13 4	1 1 0
300,000..	0 13 4	0 10 0	46 17 6	0 13 4	1 1 0
350,000..	0 13 4	0 10 0	49 4 6	0 13 4	1 1 0
400,000..	0 13 4	0 10 0	51 11 3	0 13 4	1 1 0
500,000..	0 13 4	0 10 0	53 18 3	0 13 4	1 1 0
600,000..	0 13 4	0 10 0	58 12 0	0 13 4	1 1 0
700,000..	0 13 4	0 10 0	63 5 9	0 13 4	1 1 0
800,000..	0 13 4	0 10 0	67 19 6	0 13 4	1 1 0
900,000..	0 13 4	0 10 0	72 13 3	0 13 4	1 1 0
1,000,000..	0 13 4	0 10 0	77 7 0	0 13 4	1 1 0
Above that..	0 13 4	0 10 0	82 0 9	0 13 4	1 1 0

Fees of Probates.

Effects sworn under.	Oath of Executors and attendants on the party being sworn.	Affidavit for the Inventory and attendants on the party sworn.	Engrossing and collating the will, the folios of ninety words or under.	Probate under seal.	Extracting.	Clerk's fee.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 2 6	0 2 6	0 4 6	0 1 0	0 1 0	—
20	0 2 6	0 2 6	0 4 6	0 1 0	0 3 4	0 1 0
100	0 3 0	0 5 0	0 4 6	0 1 0	0 6 8	0 2 0
200	0 6 8	0 6 8	0 4 6	0 3 0	0 6 8	0 2 0
300	0 10 0	0 10 0	0 4 6	0 7 6	0 6 8	0 2 0
450	0 10 0	0 10 0	0 4 6	0 12 0	0 6 8	0 2 0
600	0 10 0	0 10 0	0 4 6	0 16 6	0 6 8	0 2 0
800	0 10 0	0 10 0	0 4 6	1 2 6	0 6 8	0 2 0
1,000	0 10 0	0 10 0	0 4 6	1 13 0	0 6 8	0 2 0
1,500	0 10 0	0 10 0	0 4 6	2 5 0	0 6 8	0 5 0
2,000	0 10 0	0 10 0	0 4 6	3 0 0	0 6 8	0 5 0
3,000	0 10 0	0 10 0	0 4 6	3 15 0	0 13 4	0 5 0
4,000	0 10 0	0 10 0	0 4 6	4 10 0	0 13 4	0 5 0
5,000	0 10 0	0 10 0	0 4 6	4 15 0	0 13 4	0 7 6
6,000	0 10 0	0 10 0	0 4 6	5 0 0	0 13 4	0 7 6
7,000	0 10 0	0 10 0	0 4 6	5 5 0	0 13 4	0 7 6
8,000	0 10 0	0 10 0	0 4 6	5 10 0	0 13 4	0 7 6
9,000	0 10 0	0 10 0	0 4 6	5 15 0	0 13 4	0 7 6
10,000	0 10 0	0 10 0	0 4 6	6 0 0	0 13 4	0 7 6
12,000	0 10 0	0 10 0	0 4 6	6 5 0	0 13 4	0 7 6
14,000	0 10 0	0 10 0	0 4 6	6 10 0	0 13 4	0 7 6
16,000	0 10 0	0 10 0	0 4 6	6 17 6	0 13 4	0 7 6
18,000	0 10 0	0 10 0	0 4 6	7 5 0	0 13 4	0 7 6
20,000	0 10 0	0 10 0	0 4 6	7 12 6	0 13 4	0 7 6
25,000	0 10 0	0 10 0	0 4 6	8 2 6	0 13 4	0 7 6
30,000	0 10 0	0 10 0	0 4 6	8 15 0	0 13 4	0 7 6
35,000	0 10 0	0 10 0	0 4 6	9 7 6	0 13 4	0 7 6
40,000	0 10 0	0 10 0	0 4 6	10 6 3	0 13 4	0 7 6
45,000	0 10 0	0 10 0	0 4 6	11 5 0	0 13 4	0 7 6
50,000	0 10 0	0 10 0	0 4 6	12 3 9	0 13 4	0 7 6
60,000	0 10 0	0 10 0	0 4 6	13 2 6	0 13 4	0 7 6
70,000	0 10 0	0 10 0	0 4 6	15 0 0	0 13 4	0 7 6
80,000	0 10 0	0 10 0	0 4 6	16 17 6	0 13 4	1 1 0
90,000	0 10 0	0 10 0	0 4 6	18 15 0	0 13 4	1 1 0
100,000	0 10 0	0 10 0	0 4 6	20 12 6	0 13 4	1 1 0
120,000	0 10 0	0 10 0	0 4 6	21 11 3	0 13 4	1 1 0
140,000	0 10 0	0 10 0	0 4 6	23 8 9	0 13 4	1 1 0
160,000	0 10 0	0 10 0	0 4 6	25 6 3	0 13 4	1 1 0
180,000	0 10 0	0 10 0	0 4 6	27 3 9	0 13 4	1 1 0
200,000	0 10 0	0 10 0	0 4 6	29 1 3	0 13 4	1 1 0
250,000	0 10 0	0 10 0	0 4 6	30 18 9	0 13 4	1 1 0
300,000	0 10 0	0 10 0	0 4 6	35 12 6	0 13 4	1 1 0
350,000	0 10 0	0 10 0	0 4 6	40 6 3	0 13 4	1 1 0
400,000	0 10 0	0 10 0	0 4 6	41 17 6	0 13 4	1 1 0
500,000	0 10 0	0 10 0	0 4 6	43 8 9	0 13 4	1 1 0
600,000	0 10 0	0 10 0	0 4 6	46 6 3	0 13 4	1 1 0
700,000	0 10 0	0 10 0	0 4 6	49 13 9	0 13 4	1 1 0
800,000	0 10 0	0 10 0	0 4 6	52 16 3	0 13 4	1 1 0
900,000	0 10 0	0 10 0	0 4 6	55 18 9	0 13 4	1 1 0
1,000,000	0 10 0	0 10 0	0 4 6	59 1 3	0 13 4	1 1 0
Above that sum	0 10 0	0 10 0	0 4 6	62 3 9	0 13 4	1 1 0

For engrossing and collating the will if more than three folios of ninety words each, per folio, 1s. 6d.

Fees of Double or Cessate Probates.

If the effects are sworn under.	Attendance in the Registry and looking up Will and bespeaking engrossment.	Oath of the executor and attendance on his being sworn.	Affidavit for In. Rev. Office and attendance on the executor being sworn.	Drawing & copying statement in support of application for duty-paid stamp	Attending the Commission-ers of Stamps and procuring the duty-paid stamp.	Double Probate under seal.	Extracting.	Clerk.
£	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
500..	3 4	2 6	2 6	—	—	1 0	1 0	—
200..	3 4	2 6	2 6	—	—	1 0	3 4	1 0
100..	6 8	5 0	5 0	6 8	13 4	1 0	6 8	2 0
200..	6 8	6 8	6 8	6 8	13 4	3 0	6 8	2 0
300..	6 8	10 0	10 0	6 8	13 4	7 6	6 8	2 0
450..	6 8	10 0	10 0	6 8	13 4	12 0	6 8	2 0
600..	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
800..	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
1000..	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
1500..	6 8	10 0	10 0	10 0	13 4	12 6	6 8	5 0
2000..	6 8	10 0	10 0	10 0	13 4	12 6	6 8	5 0
3000..	6 8	10 0	10 0	10 0	13 4	12 6	13 4	5 0
4000..	6 8	10 0	10 0	10 0	13 4	12 6	13 4	5 8
5000..	6 8	10 0	10 0	10 0	13 4	12 6	13 4	7 6
Above 5000..	The fees to be taken are the same as above, except the Clerk's fee, which, if the effects are of the value of 70,000 <i>l.</i> or upwards, is 1 <i>l.</i> 1 <i>s.</i>							

Exemplification of Probate or Letters of Administration with or without Will annexed.

	£	s.	d.
Attending in the registry, looking up the grant of probate and original will or grant of administration, and bespeaking exemplification	0	6	8
Exemplification under seal and stamp ...	1	1	0
Extracting	0	6	8
Clerks	0	2	6

Duplicate and Triplicate Probates or Letters of Administration with or without Will annexed.

Attending in the registry, looking up the will, and bespeaking duplicate or triplicate probate and engrossment	0	6	8
Drawing and copying statement in support of application to the Inland Revenue Office for the duty-paid stamp	0	10	0
Attending at the Inland Revenue Office and procuring the duty-paid stamp	0	13	4

Duplicate or triplicate probate or letters of administration, with or without the will annexed, if the personal estate is under 450*l.*, or any smaller sum ... } The same fee as on the first grant.

If the personal estate is of the value of 450*l.* and upwards ... 0 12 6
 Extracting ... 0 6 8
 Clerks ... 0 2 6

Letters of Administration with or without Will annexed de bonis non or Cessate.

If the effects are sworn under.	Attending in Registry, looking up and perusing will, & taking account of former grant.	Oath of the Administrator and attendance on his being sworn, and on execution of the bond.	Affidavit for Inland Revenue Office, and attendance on administrator being sworn.	Drawing & copying statement in support of application to Inland Revenue Office for duty-paid stamp.	Attending at the Inland Revenue Office and procuring the duty-paid stamp.	De bonis administration with Will under seal and duty-paid stamp.	Extracting.	Clerks.
£	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
5	6 8	5 0	2 6	—	—	1 0	1 0	—
20	6 8	5 0	2 6	—	—	1 0	3 4	1 0
50	6 8	6 8	5 0	—	—	1 6	4 8	2 0
100	6 8	10 0	6 8	5 0	6 8	3 0	6 8	2 0
200	6 8	13 4	6 8	6 8	13 4	4 6	6 8	2 0
300	6 8	16 8	10 0	6 8	13 4	12 0	6 8	2 0
450	6 8	16 8	10 0	6 8	13 4	12 6	6 8	2 0

Above 450 The fees to be taken are the same as above, except the extracting fee, which, if the effects are 1500*l.* and upwards, is 13*s.* 4*d.*, and the clerk's fee, which, if the effects are 600*l.* and upwards, is 5*s.*

Probates, Special or Limited.

Consulting fee ... 0 6 8

Affidavit for Inland Revenue Office and attendance on the executor being sworn:—

The same fee as on ordinary probates.

Drawing special oath of executor, per folio of seventy-two words ... £ s. d.
 ... 0 1 0

Fair copy of the oath for the registrar, per folio of seventy-two words ... 0 0 4

Attending the registrar thereon ... 0 13 4

Engrossing same, per folio of 72 words ... 0 0 4

Attendance on the executor being sworn ... 0 6 8

Engrossing and collating the will three folios of 90 words or under

Special or limited probate, under seal ... } The same fees as on ordinary probates.

Extracting ...

Clerk ...

NON-CONTENTIOUS BUSINESS. lxxv

Letters of Administration, Special or Limited.

Consulting fee... ..	0	6	8
Perusing and abstracting deeds or other instruments, when necessary, at per folio of ninety words	0	0	4
Proxy of nomination... ..	0	18	4
Affidavit for Inland Revenue Office and attendance on the administrator being sworn:—The same fees as on ordinary grants of letters of administration.			
Drawing special oath of the administrator, per folio of seventy-two words	0	1	0
Fair copy of the oath for the registrar to peruse, per folio of seventy-two words	0	0	6
Attending the registrar thereon	0	18	4
Engrossing same, per folio of 72 words	0	0	4
Attendance when the administrator was sworn, and on execution of the bond	The same fees as on ordinary grants of letters of administration.		
Letters of administration under seal and stamp			
Extracting			
Clerks			

Office Copies of, or Extracts from, Records, Wills and other Documents.

For attendance in the registry for searching for a record, will, or other document, or for a grant of probate, or letters of administration, with or without a will annexed, for the first five years, or any period less than five years, including the ordering of a copy	£	s.	d.
For every five years after the first five years	0	5	0
For the perusal of a record, will or other document, when necessary, for the purpose of ordering extracts or for any other purpose, including the ordering of extracts, per folio of ninety words	0	8	4
For collating an office copy or extract of a record, will, or other document, with the original, including extracting fee, per folio of ninety words	0	0	4
For collating an office copy of the Act on granting probate or administration with the original entry thereof, including extracting fee	0	0	2
	0	1	0

Caveats.

For attendance in the registry and entering caveat	£	s.	d.
... ..	0	6	8
For attendance in the registry and giving instructions for warning caveators to enter an appearance	£	s.	d.
... ..	0	6	8

Affidavits other than the Affidavits and Oaths included in the Fees of Probate and Letters of Administration and Declarations of Personal Estate and Effects.

For taking instructions for every affidavit or declaration of personalestate and effects	£	s.	d.
For drawing and fair copy of the same, per folio of seventy-two words	0	6	8
For every copy thereof, per folio of 72 words	0	1	0
... ..	0	0	4

Instruments of Renunciation and Consent, Letters of Attorney and other Documents prepared by Proctors, Solicitors, or Attorneys.

For drawing and fair copy of every instrument of renunciation, consent, letter of attorney, or other document prepared as above, per folio of seventy-two words	£	s.	d.
For every fair copy, per folio of seventy-two words	0	1	0
... ..	0	0	4

RULES, ORDERS, AND INSTRUCTIONS
FOR THE
REGISTRARS OF THE PRINCIPAL
REGISTRY

OF

HIS MAJESTY'S COURT OF PROBATE,

Made under the provisions of the "Act to amend the Law relating to Probates and Letters of Administration in England," (20 & 21 Vict. cap. 77), in respect of

NON-CONTENTIOUS BUSINESS.

Non-contentious business shall include all common form business as defined by the Act, and the warning of caveats.

Application for Probate or Letters of Administration.

1. Application for probate or letters of administration may be made at the principal registry in all cases.

2. For the present such applications are to be made through a proctor, solicitor, or attorney.

3. In no case should the registrars allow the probate or administration to issue until all the inquiries which they may see fit to institute have been answered to their satisfaction. The registrars are, notwithstanding, to afford as great facility for the obtaining grants of probate or administration as is consistent with a due regard to the prevention of error or fraud.

As to Probate of Wills and Codicils and Letters of Administration, with the Will [or Will and Codicils] annexed, where the Wills and Codicils or the Codicils only are dated after 31st December 1837.

4. If there be no attestation clause to a will presented for probate, or if the attestation clause theret-

be insufficient, the registrars must require an affidavit from at least one of the subscribing witnesses, if either of them are living, to prove that the provisions of 1 Vict. c. 26, s. 9, and 15 & 16 Vict. c. 24, in reference to the execution of the will were in fact complied with; and such affidavit must be engrossed and form part of the probate, so that the same may be a perfect document on the face of it.

5. If on perusing the affidavit it appear that the requirements of the statute were not complied with, the registrars must refuse probate.

6. If on perusing the affidavit or affidavits setting forth the facts of the case, it appear doubtful whether the will has been duly executed, the registrars may require the parties to bring the matter before the judge on motion.

7. If both the subscribing witnesses are dead, or if, from other circumstances, no affidavit can be obtained from either of them, resort must be had to other persons, if any, who may have been present at the execution of the will; but if no affidavit of any such other person can be obtained, in order to probate evidence on affidavit must be procured of that fact and of the handwriting of the subscribing witnesses, and also of any circumstances which may raise a presumption in favour of the due execution of the will.

8. Interlineations and alterations are invalid unless they existed in the will at the time of its execution, or if made afterwards unless they have been executed and attested in the mode required by the statute, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of some codicil thereto.

9. Where interlineations or alterations appear in the will (unless duly executed or duly accounted for by the attestation clause), an affidavit or affidavits in proof of their having existed in the will before its execution, must be filed, except when the alterations are merely verbal or are of but small importance, and are evidenced by the initials of the attesting witnesses.

10. In like manner, erasures and obliterations, are not to prevail unless proved to have existed in the will at the time of its execution, or unless the alterations thereby effected in the will are duly executed and attested, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of some codicil thereto. If no satisfactory evidence is adduced as to the time when such erasures and obliterations were made, and the words erased or obliterated be not entirely

effaced, but can upon inspection of the paper, be readily ascertained, they must form part of the probate.

11. In every case of words having been erased which might have been of importance, an affidavit should be required.

12. If a will contain a reference to any deed, paper, memorandum, or other document, of such a nature as to raise a question whether it ought or ought not to form a constituent part of such will, the production of such deed, paper, memorandum, or other document should be required, with a view to ascertain whether it be entitled to probate; and if not produced its non-production should be accounted for.

13. No deed, paper, memorandum, or other document can form part of a will or codicil unless it were in existence at the time when the will or codicil was executed.

14. If any vestiges of sealing wax or wafers or other appearances are observable, leading to the inference that any paper, memorandum, or other document may have been annexed or attached to the will, they should be satisfactorily accounted for, or the production of such paper, memorandum, or other document must be required; and if not produced its non-production must be accounted for.

15. The above rules and orders respecting wills apply equally to codicils.

16. In case of probate of a married woman's will or of administration with the will of a married woman annexed made by virtue of a power, the power under which the will purports to have been made must be specified in the grant.

As to Probate of Wills, Codicils, and Testamentary Papers relating to Personality, and dated before the 1st January 1838.

17. It is not necessary that a will, codicil, or testamentary paper dated before 1st January 1838 should be attested by witnesses to constitute it a valid disposition of a testator's personal property. Although neither signed by the testator nor attested by witnesses, it may nevertheless be valid; but in such cases the testator's intention that it should operate as his will, codicil, or testamentary disposition must be proved clearly by circumstances.

18. A will, codicil, or testamentary paper, signed by the testator at the end of it, and attested by two disinterested witnesses, (although there be no clause of attestation) is *primâ facie* entitled to probate.

19. In cases where a will, codicil, or testamentary paper is attested by two witnesses, such witnesses are not required to have been present with the testator at the same time. It is sufficient if the testator subscribed his name or made his mark to it in the presence of, or produced it with his name already written or his mark already made, to one attesting witness, and afterwards to the other attesting witness, provided that on each occasion he declared it to be his will or codicil, or otherwise notified his intention that it should operate as such.

20. If the will, codicil, or testamentary paper is signed at the end of it by the testator, but is unattested, and there is nothing to show an intention that it should be attested by witnesses, the affidavit of two disinterested persons to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

21. If the will, codicil, or testamentary paper is signed at the end of it by the testator, and attested by one witness only, and there is nothing to show the testator's intention that it should be attested by a second witness, the affidavit of one disinterested person to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

22. The circumstance of a person being named as an executor in the will, codicil, or testamentary paper, or being interested as a legatee or as the husband or wife of a legatee under such will, codicil, or testamentary paper, rendered him incompetent to become an attesting witness to it, so that if the name of a person so interested appears as that of a subscribing witness to the will, or testamentary paper, the same, so far as regards his attestation, must be considered as unattested, and his evidence in support thereof will be inadmissible, unless he shall first release his interest thereunder.

23. If an attestation clause, or the word "witnesses," appear written at the foot of the paper, the same being unattested, or if the paper purport on the face of it to be a draft of a will, the copy of a will, or instructions for a will, it must *prima facie* be considered as an incomplete paper, and not, save under special circumstances, entitled to probate.

24. Any appearance of an attempted cancellation of a paper by burning, tearing, obliteration, or otherwise must be accounted for.

25. Every fact leading to a presumption of aban-

donment or revocation of the paper on the part of the testator must be accounted for.

26. Alterations and interlineations made by the testator, if unattested, are to be proved by an affidavit of two persons to his handwriting. If the same are in the handwriting of any person other than the testator, it will suffice to prove by affidavit that they were known to and approved of by the testator. Proof by affidavit that they existed in the paper at the time it was found in the repositories of the testator recently after his death may, under circumstances, suffice. Alterations and interlineations made since the 31st of December 1837 are subject to the provisions of 1 Vict. c. 36.

27. With respect to deeds, papers, memoranda, or other documents mentioned in a testamentary paper, or appearing to have been annexed or attached thereto, the foregoing rules, orders, and instructions as to wills bearing date since the 31st of December 1837 will apply.

28. A will made before the 1st of January 1838 is confirmed by a codicil duly executed bearing date on or after that day.

As to Letters of Administration.

29. Where administration is applied for by one or some of the next of kin only, there being another or other next of kin equally entitled thereto, the registrars may require proof by affidavit or statutory declaration that notice of such application has been given to such other next of kin.

30. Limited administrations are not to be granted unless every person entitled to the general grant has consented or renounced, or has been cited and failed to appear, except under the direction of the judge.

31. Whenever the court under sect. 73 appoints an administrator other than the person who prior to the Act would have been entitled to the grant, the same is to be made plainly to appear in the oath of the administrator, in the letters of administration, and in the administration bond.

32. The registrars are to take care (as far as possible) that the sureties to administration bonds are responsible persons.

33. In all cases where grants of administration are made for the use and benefit of minors, the administrators are required to exhibit a declaration on oath of the personal estate and effects of the deceased, except where the effects are sworn under twenty pounds,

or where the administrators are the guardians appointed by the High Court of Chancery, or are the testamentary guardians of the minors; and in all cases of persons cited, but not personally, and not appearing, the administrators are required to exhibit a similar declaration, and the sureties are required to justify.

34. In all administrations of a special character the recitals in the oath and in the letters of administration must be framed in accordance with the facts of the case.

35. Grants of administration will continue to be made as heretofore to the guardians of minors, and infants for the use and benefit of such minors and infants during their minority; and elections by minors of their next of kin or next friend, as the case may be, to such guardianship, will continue to be required; but proxies accepting such guardianship will in future be dispensed with.

General Rules and Orders for the Principal Registrars.

36. No probate or letters of administration with the will annexed shall issue until after the lapse of seven days from the death of the deceased, unless under the direction of the judge.

37. No letters of administration shall issue until after the lapse of fourteen clear days from the death of the deceased, unless under the direction of the judge.

38. The registrars may, in cases where they deem it necessary, require proof, in addition to the oath of the executor or administrator, of the identity of the deceased, or of the party applying for the grant.

39. In every case where probate or administration is, for the first time, applied for after the lapse of three years from the death of the deceased, the reason of the delay is to be certified to the registrars. Should the certificate be unsatisfactory the registrars are to require an affidavit.

40. The oath of administrators, and of administrators with the will annexed, is to be so worded as to clear off all persons having a prior right to the grant, and the grant is to show on the face of it how the prior interests have been cleared off.

41. The usual oath of administrators is, as well as that of executors and administrators with the will, to be reduced into writing, and to be subscribed and sworn by them as an affidavit, and then filed in the registry.

42. Every will or copy of a will to which an exe-

utor or administrator with the will is sworn should be marked by such executor or administrator and by the person before whom he is sworn.

43. After motions have been made before the judge in court with regard to applications for probate and administration made at the district registries, the registrars are, unless the judge shall otherwise direct, to return to the district registrars the original papers and documents, with the directions of the judge thereon.

44. Papers and other documents may be transmitted by the registrars of the principal registry to the district registrars through the post-office. Such letters or packets are to be superscribed with the words, "On her Majesty's Service," and may be registered, if thought necessary.

45. In the case of persons residing out of England, administrations with the will annexed, and administrations, may be granted to their attorney, acting under a power of attorney duly attested.

46. The addition and true place of abode of every person making an affidavit is to be inserted therein.

47. In every affidavit made by two or more persons, the names of the several persons making it are to be written in the jurat.

48. No affidavit will be admitted in any matter depending in the Court of Probate in the jurat of which there is any interlineation or erasure.

49. Where an affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the registrar, commissioner, or other person before whom such affidavit is made is to state in the jurat that the affidavit was read in the presence of the party making the same, and that such party seemed perfectly to understand the same, and also that the said party made his or her mark, or wrote his or her signature, in the presence of the registrar, commissioner, or other person before whom the affidavit was made.

50. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his proctor, solicitor, or attorney, or before a clerk of his proctor, solicitor or attorney.

51. Proctors, solicitors and attorneys, and their clerks respectively, if acting for any other proctors, solicitors or attorneys, shall be subject to the rules in respect of taking affidavits which are applicable to those in whose stead they are acting.

52. A caveat shall remain in force for the space of six months only, and then expire and be of no effect; but caveats may be renewed from time to time as heretofore.

53. The registrars shall, immediately upon a caveat being lodged, send notice thereof to the registrars of any district in which it is alleged the deceased resided at the time of his death, or in which he is known to have had a fixed place of abode at the time of his death.

54. No caveat shall affect any grant made on the day on which the caveat is entered, unless notice of such caveat has been received prior to the grant passing the seal.

55. A caveat shall be warned at the place mentioned in it as the address of the person who entered it.

56. It shall be sufficient for the warning of a caveat that a registrar send by the public post a warning signed by himself, and directed to the person who entered it, at the address mentioned in it.

57. Any person intending to oppose a grant of probate or letters of administration must appear, either personally, or by his proctor, solicitor, or attorney, and enter an appearance in the principal registry. This rule is to apply whether the person intending to oppose the grant has or has not been previously warned to a caveat or served with a citation.

58. Citations against all persons in general, and other instruments, heretofore required to be served by affixing them in some public place, are in future to be served by the insertion of the same as advertisements in such of the leading morning and evening papers, and such of the local papers, as the judge may from time to time direct. Such citations can only be allowed to issue in cases where there is an affidavit to lead them.

59. The registrars are not to allow probate of the will, or administration with the will annexed, of any blind person, or of any obviously illiterate or ignorant person, to issue, unless they have previously satisfied themselves that the said will was read over to the deceased before its execution, or that the deceased had at such time knowledge of its contents.

60. Whenever, subsequently to a grant having been made, the value of the personal estate and effects of the deceased person is resworn under a different amount, or any renunciation is filed, or any alteration is made in the grant, notice of such re-swearing, renunciation, or alteration, is without delay to be forwarded by the registrars of the principal registry to all the district registrars.

61. The seal is not to be affixed to any probate or letters of administration granted in Ireland, so as to give operation thereto as if the grant had been made by the Court of Probate in England, unless such probate or administration be duly stamped in respect of the personal estate and effects of which the deceased died possessed in England, and unless the same appear from a stamp on the probate or letters of administration expressly denoting the same, or unless the same appear from a certificate of the Commissioners of Inland Revenue or their proper officer.

62. In all cases where application is made for letters of administration (either with or without a will annexed) of the goods of a bastard dying bachelor, or a spinster, or a widower, or widow, without issue, or of a person dying without known relation, notice of such application is to be given to her Majesty's Procurator-General, in order that he may determine whether it will be expedient to interfere on the part of the Crown; save and except that when the deceased is domiciled within the Duchy of Lancaster, notice is to be given to the solicitor for the Duchy in London; and no grant is to be issued until that officer has signified the course it will be proper to take under the circumstances of each particular case.

68. The registrars are to take care that the copies of wills to be annexed to the probate or letters of administration are fairly and properly written in the engrossing hand heretofore in use in the Prerogative Court, and are to reject those which are otherwise.

Forms of Instruments to be adopted in the Principal Registry of the Court of Probate, as nearly as the Circumstances of each Case will allow.

No. 1.—Notice of the Entry of a Caveat in the principal Registry.

**To the Registrar of the District Registry of
Her Majesty's Court of Probate.**

You are requested to take notice, that a caveat has been entered in this registry of the following tenor [set out the caveat at full length].

This day of 18 .
(Signed) C. D., Registrar.

No. 2.—Affidavit of attesting Witness in proof of the due Execution of a Will or Codicil dated after 31st December 1837.

In her Majesty's Court of Probate. The Principal Registry.

In the goods of *A. B.*, deceased.

I *C. D.* of in the county of make oath [or solemnly affirm], that I am one of the subscribing witnesses to the last will and testament [or codicil, *as the case may be*] of the said *C. D.*, late of in the county of deceased, the said will [or codicil] being now hereunto annexed, bearing date , and that the said testator executed the said will [or codicil] on the day of the date thereof, by signing his name at the foot or end thereof [or in the testimonium clause thereof, or in the attestation clause thereto, *as the case may be*], as the same now appears thereon, in the presence of me and of the other subscribed witness thereto, both of us being present at the same time, and we thereupon attested and subscribed the said will [or codicil] in the presence of the said testator. (Signed) *C. D.*

Sworn at on the day of 18 , before me [person authorised to administer oaths under the Act].

N. B.—If the signature is in testimonium clause or attestation clause, it must be shown in the affidavit that the testator fully intended the same as his final signature to his will.

No. 3.—Affidavit for the Commissioners of Inland Revenue.—For Executors.

In her Majesty's Court of Probate. The Principal Registry.

In the goods of *A. B.*, deceased.

The day of 18 .

I *C. D.* of ⁽¹⁾ make oath [or solemnly affirm] that I am one of the executors [or the executor] named in the last will and testament ⁽²⁾ of the said *A. B.*, late of deceased; that the said deceased died on or about the day of in the year of our Lord one thousand hundred and at ⁽³⁾ , and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which a probate of the said will is to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons,

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and not beneficially [*if any leaseholds insert clause No. 1. hereon indorsed*], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information, and belief [*if no leaseholds insert clause No. 2 hereon indorsed*].

(Signed) C. D.
Sworn at on the day of before
me [person authorised to administer oaths under the Act].

(¹) Insert the names, residences, and titles, or professions of the persons making the affidavit.

(²) Insert codicils, if any.

(³) Insert place of death, or set forth the reason why the same cannot be furnished.

N.B. Forms for the two leasehold clauses to be printed on the back of the affidavit.

No. 8a.—*Affidavit for the Commissioners of Inland Revenue.—For Administrators with the Will annexed.*

In her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B., deceased.

The day of 18 .

I C. D. of (¹) the party applying for administration with the will (²) annexed of the personal estate and effects of A. B., late of , deceased, make oath [or solemnly affirm], that the said deceased died on or about the day of one thousand hundred and at (³) , and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which letters of administration with the said will (²) annexed are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially [*if leaseholds insert clause No. 1 hereon indorsed*], and

* *Form of Leasehold Clause No. 1.*

Including the leasehold estate or estates for years of the said deceased, whether absolute or determinable on a life or lives.

+ *Form of Leasehold Clause No. 2.*

And I [or we] lastly make oath, that the said deceased was not possessed of or entitled to any leasehold estate or estates for years, whether absolute or determinable on a life or lives, to the best of my [or our] knowledge, information and belief.

without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information, and belief [*if no leaseholds insert clause No. 2 hereon indorsed*]. (Signed) C. D.

Sworn at on the day of before me [*person authorised to administer oaths under the Act*].

(1) Insert the names, residences and titles or professions of the persons making the affidavit.

(2) Insert codicils, if any.

(3) Insert the place of death, or set forth the reason why the same cannot be furnished.

N.B. Forms for the two leasehold clauses to be printed at the back of the affidavit.

No. 8 b.—*Affidavit for the Commissioners of Inland Revenue.—For Administrators.*

In Her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B., deceased.

The day of 18 .

I C. D. of (1) the party applying for letters of administration of the personal estate and effects of the said A. B., late of make oath [*or solemnly affirm*] and say as follows: That the said deceased died on or about the day of one thousand hundred and at (2) , and that the personal estate and effects of the said deceased which he any way died possessed of or entitled to, and for or in respect of which letters of administration are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person and persons, and not beneficially [*if any leaseholds insert clause No. 1 hereon indorsed*], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information and belief [*if no leaseholds insert clause No. 2 hereon indorsed*].

(Signed) C. D.

Sworn at on the day of before me [*person authorised to administer oaths under the Act*].

(1) Insert the names, residences, and titles or profession of the person making the affidavit.

(2) Insert place of death, or set forth the reason why the same cannot be furnished.

N.B.—Forms for the two leasehold clauses to be printed at the back of the affidavit.

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No. 4.—*Oath for Executor.*

In her Majesty's Court of Probate. The Principal Registry.

In the goods of *A. B.* deceased.

I *C. D.* of in the county of make oath and say [or solemnly affirm], that I believe this paper writing [or these paper writings] hereto annexed to contain the true and original last will and testament [or last will and testament with codicils] of *A. B.* late of in the county of deceased, and that I am the sole executor [or one of the executors] therein named [or executor according to the tenor thereof, executor during life, executrix during widowhood, or as the case may be] and that I will faithfully administer the personal estate and effects of the said testator by paying his just debts and the legacies contained in his will [or will and codicils], so far as the same shall thereto extend and the law bind me; that I will exhibit an inventory, and render an account of my executorship, whenever required by law so to do; that the testator died at in the county of on the day of 18 ; and that the whole of the personal estate and effects of the said testator does not amount in value to the sum of pounds, to the best of my [or our] knowledge, information, and belief. (Signed) *C. D.*

Sworn at this day of 18 , before me, *E. F.*

Each testamentary paper to be marked by the persons sworn and the person administering the oath.

No. 5.—*Oath for Administrators with the Will.*

In her Majesty's Court of Probate. The Principal Registry.

In the goods of *A. B.* deceased.

I *C. D.* of in the county of make oath and say [or solemnly affirm], that I believe this paper writing [or these paper writings] hereunto annexed to contain the true and original last will and testament [or the last will and testament with codicils] of *A. B.* late of in the county of deceased, and that the executor therein named is dead without having taken probate thereof [or as the fact may be], and that I am the residuary legatee in trust named therein [or as the fact may be], and that I will faithfully administer the personal estate and effects of the said deceased according to the tenor of his will [or will and codicils] by

paying his just debts and the legacies contained in his will [or will and codicils], and distributing the residue of his estate according to law; that I will exhibit an inventory and render an account of my administration whenever required by law so to do; that the testator died at on the day of 18 ; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of pounds, to the best of my knowledge, information, and belief. (Signed) C. D.
Sworn at this day of 18 ,
before me,

Each testamentary paper to be marked by the persons sworn and the person administering the oath.

No. 6.—*Oath for Administrators.*

In her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B. deceased.

I C. D. of in the county of make oath and say [or solemnly affirm], that A. B., late of deceased, died a bachelor, without parent, brother or sister, uncle or aunt, nephew or niece, and intestate, and that I am the lawful cousin german and one of the next of kin of the said deceased [*this must be altered in accordance with the circumstances of the case*]; that I will faithfully administer the personal estate and effects of the said deceased, by paying his just debts, and distributing the residue of his estate according to law; that I will exhibit an inventory and render an account of my administration whenever required by law so to do; that the said deceased died at on the day of 18 ; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of pounds, to the best of my knowledge, information, and belief. (Signed) A. B.
Sworn at this day of 18 ,
before me,

No. 7.—*Probate.*

In her Majesty's Court of Probate. The Principal Registry.

Be it known, that on the day of 18 the last will and testament [or the last will and testament with codicils] hereunto annexed of

A. B., late of deceased, who died on or about
 at , was proved, and registered in the
 said district registry of attached to her Majesty's
 Court of Probate, and that the administration of all
 and singular the personal estate and effects of the
 said deceased was granted by the aforesaid court to
 C. D., the sole executor [or as the case may be] named
 in the said will, he having been first sworn well and
 faithfully to administer the same, by paying the just
 debts of the deceased and the legacies contained in
 his will [or will and codicils] so far as he is
 thereunto bound by law, and to exhibit a true and
 perfect inventory of all and singular the said estate
 and effects, and to render a just and true account
 thereof whenever required by law so to do.

(Signed) E. F., Registrar.

Extracted by (L.S.)
 Sworn under £ , and that the } To be written in
 testator died on or about the } the margin of
 day of , 18 } probate.

No. 8.—*Letters of Administration with the Will annexed.*

In her Majesty's Court of Probate. The Principal
 Registry.

Be it known, that A. B., late of in the county
 of deceased, who died on or about the day
 of , at , made and duly executed his last
 will and testament and did therein name .
 And be it further known, that on the day of
 18 , letters of administration with the said
 will annexed of all and singular the personal
 estate and effects of the said deceased were granted
 by her Majesty's Court of Probate to C. D. [insert
 the character in which the grant is taken], he having
 previously been sworn well and faithfully to adminis-
 ter the same according to the tenor of the said will
 to pay the just debts of the said deceased, and
 to exhibit a true and perfect inventory of all and sin-
 gular the said personal estate and effects and to
 render a just and true account thereof whenever
 required by law so to do.

(Signed) E. F., Registrar.

Extracted by (L.S.)
 Sworn under £ and that the testator died on or
 about the day of 18 .

No. 9.—*Letters of Administration.*

In her Majesty's Court of Probate. The Principal Registry.

Be it known, that on the day of 18 , letters of administration of all and singular the personal estate and effects of *A. B.*, late of deceased, who died on or about 18 , at intestate, were granted by her Majesty's Court of Probate to *C. D.* of the widow [*or as the case may be*] of the said intestate, she having been first sworn well and faithfully to administer the same, by paying his just debts, and distributing the residue of his personal estate and effects according to law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

(Signed) *E. F.*, Registrar.

Extracted by

(L.S.)

Sworn under £ , and that the } *To be written in*
intestate died on or about the } *margin of admi-*
day of , 18 . } *stration will.*

No. 10.—*Double Probate.*

In her Majesty's Court of Probate. The Principal Registry.

Be it known, that on the day of 18 , the last will and testament [*or the last will and testament with codicils*] of *A. B.*, late of deceased, who died on or about , at , was proved and registered, and that administration of all and singular the personal estate and effects of the said deceased, and any way concerning his will, was granted to *C. D.*, one of the executors named in the said will [*or codicil*], he having been already sworn well and faithfully to administer the same, and to make a true and perfect inventory of all the said personal estate and effects, and to render a just and true account thereof whenever required by law so to do, power being reserved of making the like grant to *E. F.*, the other executor named in the said will, when he should apply for the same. And be it further known, that on the day of 18 , the said will of the said deceased was also proved, and that the like administration of all and singular the personal estate and effects of the said deceased, and any way concerning his will, was granted to the said *E. F.*, he having been first duly sworn well and faithfully to administer the same, and to make a true and perfect

inventory of the personal estate and effects of the said deceased, and to render a just account thereof whenever required by law so to do.

(Signed) G. H., Registrar.
(L.S.)

Extracted by
Sworn under £ , and that the
testator died on or about the
day of 18 .
Former grant, Jan. 18 , under the same sum.

No. 11.—*Exemplification of Probate or Letters of Administration with Will annexed.*

In her Majesty's Court of Probate. The Principal Registry.

Be it known, that upon search being made in the principal registry of her Majesty's Court of Probate, it plainly appears that on the day of , in the year of our Lord 18 , the last will and testament with codicils of A. B., late of , deceased, who died at on or about 18 , was proved by C. D., the executor named therein [or letters of administration with the last will and testament [and codicils] annexed of the personal estate and effects of A. B., late of, &c., were granted to C. D., as the], and which probate or letters of administration now remain of record in the said registry. The true tenor of the said probate [or letters of administration with the will annexed, as the case may be] is in the words following, to wit:

[Here the grant is to be recited verbatim.]

In faith and testimony whereof these letters testimonial are issued.

Given at as to the time of the aforesaid search, and the sealing of these presents, this day of , in the year of our Lord 18 .

(Signed) E. F., Registrar.
(L.S.)

Extracted by
Sworn under £ , and that the
testator died on the day
of 18 .

No. 12.—*Exemplification of Administration.*

In her Majesty's Court of Probate. The Principal Registry.

Be it known, that upon search being made in the principal registry of Her Majesty's Court of Probate, it appears that on the day of in the year of our Lord 18 , letters of administration of all

and singular the personal estate and effects of *A. B.*, late of , who died at on or about , were granted to *C. D.*, the [or one of the] of the said deceased, and which letters of administration now remain of record in the said registry. The true tenor of the said letters of administration is in the words following, to wit :

[*Here the letters of administration are to be recited verbatim.*]

In faith and testimony whereof these letters testimonial are issued.

Given at as to the time of the aforesaid search, and sealing of these presents, this day of in the year of our Lord 18 .
(Signed) *K. L.*, Registrar.

Extracted by (L. S.)

Sworn under £ , and that the intestate died on the day of , 18 .

No. 13.—*Special Administration with the Will of a Married Woman annexed.*

In her Majesty's Court of Probate. The Principal Registry.

Be it known, that *A. B.*, wife of *C. B.*, late of in the county of , died on the day of 18 , at , and having during her coverture with the said *C. B.*, by virtue of certain powers and authorities given to and vested in her by a certain indenture of settlement bearing date the day of 18 , and of all other powers and authorities her enabling, made and executed her last will and testament bearing date the day of 18 , and thereof appointed her said husband, the said *C. B.*, sole executor, and that the said *C. B.*, as the lawful husband of the said deceased, is the sole person entitled to her personal estate and effects, over which she had no disposing power, and concerning which she is dead intestate. And be it also known, that on the day of 18 letters of administration (with the said will annexed) of all and singular the personal estate and effects of the said deceased were granted and committed by her Majesty's Court of Probate to the said *C. B.*, on his giving the usual security, he having been first sworn well and faithfully to administer the same, to pay whatever debts the said deceased at the time of her death did owe, and to exhibit a true and perfect inventory of all and singular her personal estate and effects, and to render a

just account thereof whenever required by law so to do. (Signed) *J. S.*, Registrar.

Extracted by _____
Sworn under 100*l.*, and that the
testatrix died on the _____ day
of 18 .

No. 13*a.*—*Limited Probate of a Married Woman's Will.*

In her Majesty's Court of Probate. The Principal Registry.

Be it known, that *A. B.*, wife of *C. B.*, late of _____ in the county of _____ died on the _____ day of 18 , at _____, and having during her coverture with the said *C. B.*, by virtue of certain powers and authorities vested in her by a certain indenture of settlement, bearing date the _____ day of 18 , and made between *E. F.* of _____ in the county of _____ esquire, of the first part, the said deceased, by her then name and description of *A. G.* of _____ in the county of _____ spinster, of the second part, and *H. I.* of _____ in the same county, gentleman, and the said *C. B.* of _____ aforesaid, of the third part, made and executed her last will and testament, bearing date the _____ day of _____ one thousand eight hundred and _____ and thereof appointed *L. M.* and *O. P.* executors.

And be it also known, that on the _____ day of 18 , the said last will and testament of the said *A. B.*, hereunto annexed, was proved and registered in the said principal registry; and that probate of the said will of the said deceased, limited to the administration of all such personal estate and effects as she the said deceased by virtue of the aforesaid indenture had a right to appoint or dispose of, and has in and by her said will appointed or disposed of accordingly, but no further or otherwise, was granted to the said *L. M.*, one of the executors named in the said will as aforesaid, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased, and the legacies contained in her said will, as far as he is thereunto bound by law, and to exhibit a true and perfect inventory of the said limited estate and effects, and to render a just and true account thereof whenever required by law so to do. Power being reserved of making a like grant of probate to the said *O. P.*, the other executor, when he shall apply for the same.

(Signed) *J. S.*, Registrar.

Extracted by _____
Sworn under £ _____, and that the
testator died on the _____ day
of _____, 18 .

No. 14.—*Special Administration of the rest of the Goods of a Married Woman.*

In her Majesty's Court of Probate. The Principal Registry.

Be it known, that *A.B.* [wife of *C.B.*], late of in the county of , died on the day of 18 , and having during her coverture with the said *C.B.*, by virtue of certain powers and authorities vested in her by a certain indenture bearing date the day of 18 , and made between *D.E.* of in the county of , esquire, of the first part, the said *C.B.*, therein described, of in the county of , gentleman, of the second part, and the said *A.B.* by her then name and description of *A.F.* of in the county of , widow, and *G.H.* of the same place, esquire, of the third part, made and executed her last will and testament, bearing date the day of 18 , and thereof appointed *E.F.* and *G.H.* executors. And be it also known, that on the day of 18 , probate of the said will, limited to the administration of all such personal estate and effects as she the said deceased, by virtue of the said indenture, had a right to appoint or dispose of, and hath in and by her said will appointed or disposed of accordingly, but no further or otherwise, was granted by authority of to the said *E.F.* and *G.H.*, the executors named in the said will. And be it further known, that on the day of 18 , letters of administration of the rest of the personal estate and effects of the said *A.B.* deceased were granted to the said *C.B.*, the lawful husband of the said deceased, he having been first sworn faithfully to administer the same, and to exhibit a true and perfect inventory thereof, and also to render a just and true account thereof whenever required by law so to do.

(Signed) *R. S.*, Registrar.
(L.S.)

Extracted by
Sworn under £ , and that the
deceased died on the day
of 18 .

No. 15. *Administration de Bonis non.*

In her Majesty's Court of Probate. The Principal Registry.

Be it known, that *A. B.*, late of in the county of , deceased, died on or about 18 , at

intestate, and that since his death, to wit, in the month of 18 , letters of administration of all and singular his personal estate and effects were committed and granted to *C. D.* [*insert the relationship or character of administrator*] (which letters of administration now remain of record in), who, after taking such administration upon him, intermeddled in the personal estate and effects of the said deceased, and afterwards died, to wit, on , leaving part thereof unadministered, and that on the day of , 18 , letters of administration of the said personal estate and effects so left unadministered were granted by her Majesty's Court of Probate to , he having been first sworn well and faithfully to administer the same, to pay his just debts, and exhibit a true and perfect inventory of the said personal estate and effects so left unadministered, and render a just and true account thereof whenever required by law so to do. (Signed) *E. F.*, Registrar.

Extracted by	(<i>L.S.</i>)	
Sworn under £ , and that the	} To be written in margin of administration will.	
intestate died on the day of		
of , 18 .		

—

No. 16.—*Administration Bond.*

Know all men by these presents, that we, *A. B.* of , *C. D.* of , and *E. F.* of , are jointly and severally bound unto *G. H.*, the judge of her Majesty's Court of Probate, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said *G. H.* or to the judge of the said court for the time being, for which payment well and truly to be made we bind ourselves and of us for the whole, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and .

The condition of this obligation is such, that if the above-named *A. B.*, the [*as the case may be*] of *I. J.*, late of deceased, who died on the day of do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased which have or shall come to hands, possession, or knowledge, or into the hands and possession of any other person for , and the same so made do exhibit or cause to be exhibited into the

principal registry of her Majesty's Court of Probate, whenever required by law so to do, and the same personal estate and effects, and all other the personal estate and effects of the said deceased at the time of death, which at any time after shall come to the hands or possession of the said , or into the hands or possession of any other person or persons for , do well and truly administer according to law; (that is to say), do pay the debts which did owe at decease, and further do make or cause to be made a true and just account of said administration whenever required by law so to do; and all the rest and residue of the said personal estate and effects to deliver and pay unto such person or persons as shall be entitled thereto under the Act of Parliament intituled "An Act for the better settling of intestates estates;" and if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors therein named do exhibit the same into the said court, making request to have it allowed and approved accordingly, if the said , being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said court, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed, and delivered in the presence of

L. K., Registrar,

[or
O. P., a clerk in the Principal Registry of Her Majesty's Court of Probate.]

No. 17.—*Administration Bond for Administrators with the Will.*

Know all men by these presents, that we, A. B., of , C. D. of , and E. F. of , are jointly and severally bound unto G. H., the judge of her Majesty's Court of Probate, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said G. H., or to the judge of the said court for the time being, for which payment well and truly to be made we bind ourselves and of us for the whole, our heirs, executors and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and .
The condition of this obligation is such that if the above-named A. B., the [as the case may be] of I. J.,

late of deceased, who died on the day
of do, when lawfully called on in that behalf,
make or cause to be made a true and perfect inven-
tory of all and singular the personal estate and effects
of the said deceased which have or shall come to
 hands, possession, or knowledge, and the
same so made do exhibit or cause to be exhibited into
the principal registry of her Majesty's Court of Pro-
bate, whenever required by law so to do, and the same
personal estate and effects do well and truly
administer, (that is to say,) do pay the debts of the
said deceased which did owe at decease,
and then the legacies contained in the said will an-
nexed to the said letters of administration so to
committed, as far as personal estate and effects
will thereto extend, and the law charge
and further do make or cause to be made a true and
just account of said administration when
shall be thereunto lawfully required, and all the rest
and residue of the said personal estate and effects
shall deliver and pay unto such person or persons as
shall be by law entitled thereto, then this obligation
to be void and of none effect, or else to remain in full
force and virtue.

Signed, sealed, and delivered in the presence of
K. L., Registrar,

[or
O. P., a clerk in the Principal Registry of Her
Majesty's Court of Probate.]

No. 18.—*Declaration of the Personal Estate and
Effects of a Testator or an Intestate.*

A true declaration of all and singular the personal
estate and effects of A.B., late of , deceased,
who died on the day of at , and had
at the time of his death a fixed place of abode
at within the district of , which have at
any time since his death come to the hands, pos-
session, or knowledge of C.D., the administrator with
the will of the said A.B. [or administrator, as the
case may be], made and exhibited upon and by virtue
of the corporal oath [or solemn affirmation] of the
said C.D., as follows, to wit:

First, this declarant declares that the	£	s.	d.
said deceased was at the time of his death			
possessed of or entitled to - - - - -			
[The details of the deceased's effects			
must be here inserted, and the value in-			
serted opposite to each particular.]			

Lastly, this declarant saith, that no personal estate or effects of or belonging to the said deceased have at any time since his death come to the hands, possession, or knowledge of this declarant, save as is hereinbefore set forth. (Signed) C.D.

On the day of 18 the said C.D. was duly sworn to [or solemnly affirmed] the truth of the above inventory, Before me,

[*Person authorised to administer oaths under the Act.*]

No. 19.—*Justification of Sureties.*

In her Majesty's Court of Probate. The Principal Registry.

In the goods of A.B. deceased.

The day of 18 .

We, C.D. of and E.F. of , jointly and severally make oath, that we are the proposed sureties on behalf of G.H., the intended administrator of all and singular the personal estate and effects of the said A.B., late of deceased, in the penal sum of pounds, for his faithful administration of the said personal estate and effects of the said deceased; and I the said C.D. for myself make oath, that I am, after payment of all my just debts, well and truly worth in money and effects the sum of ; and I the said E.F. for myself make oath, that I am, after payment of all my just debts, well and truly worth in money and effects the sum of pounds.

Same day the said C.D. and E.F. were duly sworn to the truth of this affidavit.

Before me,

[*Person authorised to administer oaths under the Act.*]

No. 20.—*Election by Minors of a Guardian.*

In her Majesty's Court of Probate. The Principal Registry.

Whereas A.B., late of in the county of deceased, died on or about the day of 18 , at intestate, a widower, leaving C.D., E.F., and G.H. his natural and lawful children and only next of kin, the said C.D. being a minor of the age of twenty years only, the said E.F. being also a minor of the age of nineteen years only, and the said G.H. being an infant of the age of six years only:

Now we, the said *C.D.* and *E.F.*, do hereby make choice of and elect *K.L.* of in the county of our lawful maternal uncle and one of our next of kin, to be our curator or guardian, for the purpose of his obtaining letters of administration of the personal estate and effects of the said *A.B.* deceased to be granted to him, for our use and benefit, and until one of us attain the age of twenty-one years [*or for the purpose of renouncing for us, and on our behalf all our right, title, and interest to and in the letters of administration, &c. as the case may be*] [*add, in cases where a proctor, solicitor or attorney appears for the minors, and we hereby appoint M.N. of our proctor, solicitor, or attorney, to file or cause to be filed this our election for us in the said principal registry of Her Majesty's Court of Probate.*]

In witness whereof we have hereunto set our hands and seals this day of in the year 18 .

Signed, sealed, and delivered in the presence of
[*One disinterested witness sufficient.*].

No. 21.—*Renunciation of Probate and Administration with the Will annexed.*

In her Majesty's Court of Probate. The Principal Registry.

Whereas *A.B.*, late of in the county of deceased, died on the day of 18 , at and whereas he made and duly executed his last will and testament bearing date the day of 18 (¹), and thereof appointed *C.D.* executor and residuary legatee in trust [*or as the case may be*]:

Now I, the said *C.D.* do hereby declare, that I have not intermeddled in the personal estate and effects of the said deceased, and will not hereafter intermeddle therein with intent to defraud creditors, and I do hereby expressly renounce all my right and title to the probate and execution of the said will [*and codicils, if any*], and to the letters of administration with the said will [*and codicils, if any*], annexed, of the personal estate and effects of the said deceased [*add, in cases where a proctor, solicitor, or attorney appears for the person renouncing, and I hereby appoint E.F. of my proctor, solicitor, or attorney, to file or cause to be filed this renunciation for me in the said principal registry of Her Majesty's Court of Probate*].

In witness whereof I have hereto set my hand
and seal, this day of 18 . C.D.
Signed, sealed, and delivered by the said C.D. in
the presence of G.H.

[*One disinterested witness sufficient.*]

(1) If there are codicils their dates should be also
inserted.

No. 22.—*Renunciation of Administration.*

In her Majesty's Court of Probate. The Principal
Registry.

Whereas A. B., late of in the county of
deceased, died on the day of 18 ,
at intestate, a widower, and whereas I, C. D.
of , am his natural lawful child, and his only
next of kin :

Now I, the said C. D. , do hereby declare that
I have not intermeddled in the personal estate and
effects of the said deceased, and do hereby expressly
renounce all my right and title to the letters of ad-
ministration of the personal estate and effects of the
said deceased [*add in cases where a proctor, solicitor,
or attorney appears for the person renouncing, and I
hereby appoint E. F. of my proctor, solicitor, or
attorney, to file or cause this renunciation to be filed
for me in the principal registry of Her Majesty's
Court of Probate.*]

In witness whereof I have hereto set my hand and
seal, this day of 18 . C. D.

Signed, sealed, and delivered by the said C. D. in
the presence of G. H.

[*One disinterested witness sufficient.*]

This to be varied according to the fact.

No. 23.—*Subpoena in a Proceeding in Common Form to
bring in a Script.*

Victoria, by the grace of God of the United King-
dom of Great Britain and Ireland Queen, Defender
of the Faith.

To of

Whereas it appears by a certain affidavit filed in
the principal registry of our Court of Probate [*or
filed in the district registry of attached to our
Court of Probate*], bearing date the day of
18 , and made by of , that a
certain original paper or script, being or purporting
to be testamentary, to wit [*here describe the paper*],

bearing date the day of 18 , is now in your possession or under your control :

Now this is to command you, that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the principal registry of our said court [or the district registry of attached to our said court] the said original paper now in the possession of you the said , or in case the said original paper be not in your possession or under your control, that you, within eight days after the service hereof on you, inclusive of the day of such service, do file in the principal registry of our said court [or in the district registry of attached to our said court], an affidavit to that effect, and therein set forth what knowledge you have of and respecting the said script : and this you shall in no wise omit under the penalty of one hundred pounds. Witness [insert the name of the judge], at the Court of Probate, the day of 18 , in the year of our reign.

Indorsement to be made of the service.

This subpoena was served by G. H. on of
on the day of 18 .
(Signed) G. H.

No. 24.—Affidavit of Handwriting.

In her Majesty's Court of Probate. The Principal Registry.

I A. B. of in the county of make oath [or solemnly affirm], that I knew and was well acquainted with C. D., late of in the county of deceased, who died on the day of at , for many years before and down to the time of his death, and that during such period I have frequently seen him write and also subscribe his name to writings, whereby I have become well acquainted with his manner and character of handwriting and subscription, and having now with care and attention perused and inspected the paper writing hereunto annexed, purporting to be and contain the last will and testament of the said deceased, beginning thus ending thus and being subscribed thus (1) "C. D." I further make oath, that I verily and in my conscience believe the whole body, series, and contents of the said will, together with the names "C. D." subscribed thereto as aforesaid, to be of the true and proper handwriting and subscription of the said "C. D." deceased.

On the day of 18 the said A. B. was

No. 25.—*Affidavit of Plight and Condition and Finding.*
In her Majesty's Court of Probate. District
Registry of

On the day of 18 the said A.B. and C.D. were duly sworn at to the truth of this affidavit [or made this solemn affirmation before me]. I.J.
[Person authorised to administer oaths under the Act.]

In Her Majesty's Court of Probate. The Principal Registry.

I A. B., of _____ in the county of _____, make oath [or solemnly affirm] that I am the sole executor named in the paper writing hereunto annexed, purporting to be and contain the last will and testament of C. D., late of _____ deceased, who died on the _____ day of _____ in the year 18____, at _____, the said will beginning thus, "_____, " ending thus, "In witness whereof, I have hereunto set my hand this _____ day of _____ in the year of our Lord one thousand eight hundred and fifty-four" [or as the case may be],

and being thus subscribed, "*C. D.*" And referring particularly to the fact that the blank spaces originally left in the said will for the insertion of the day and month of the date thereof have never been supplied [*or that the said will is without date, or as the case may be*], I further make oath [*or solemnly affirm*] that I have made inquiry of *E. F.*, the solicitor of the said deceased, and that I have also made diligent and careful search in all places where he the said deceased usually kept his papers of moment and concern, and in his depositories, in order to ascertain whether he had or had not left any other will, but that I have been unable to discover any such will. And I lastly make oath [*or solemnly affirm*], that I verily believe the said deceased died without having left any will, codicil or testamentary paper whatever other than the said will by me hereinbefore deposed of. *A. B.*

On the day of 18 the said *A. B.*
was duly sworn at to the truth of this affidavit [*or made this solemn affirmation*] before me, *G. H.*

[*Person authorised to administer oaths under the Act.*]

This form of affidavit to be used when it is shown by affidavit that neither the subscribed witnesses nor any other person can depose to the precise time of the execution of the will.

No. 27.—*Caveat.*

In Her Majesty's Court of Probate. The Principal Registry.

Let nothing be done in the goods of *A. B.*, late of deceased, who died on the day of
at , unknown to *C. D.* of having interest
[*or to E. F.* of proctor, solicitor, or attorney of parties having interest].

Dated this day of 18 .
(Signed) *C. D.* of [*or E. F.* of
the proctor, solicitor, or attorney of parties having interest].

No. 28.—*Warning to Caveat.*

In her Majesty's Court of Probate. The Principal Registry.

To *A. B.* of [*or to C. D.* of proctor, solicitor, or attorney of parties having interest].

You are hereby warned, within six days after the service of this warning upon you, inclusive of the day

of such service, to cause an appearance to be entered for you in the said district registry attached to the said Court of Probate to the caveat entered by you in the personal estate and effects of *E.F.*, late of deceased, who died at on or about the day of 18 , and to set forth your (or your client's) interest; and take notice, that in default of your so doing the said court will proceed to do all such acts, matters and things as shall be needful and necessary to be done in and about the premises.

(Signed) *X.Y.*, District Registrar.

Indorsement to be made after Service.

This warning was served by *I.K.* on *A.B.* of [or on *C.D.* of the proctor, solicitor, or attorney] by whom the caveat was entered in respect of the personal estate and effects of the within-named deceased at on the day of 18 .
(Signed) *I.K.*

[or, The duplicate of this warning signed by the said *X.Y.*, was sent by the public post, directed to the said *A.B.* [or *C.D.*] by whom the caveat was entered in respect of the personal estate and effects of the within-named deceased at on the day of 18 .
(Signed) *I.K.*

Note.—These six days are to be exclusive of Sunday.

FEEs

To be taken in the Principal Registry of the Court of Probate in Non-Contentious Business.

Probates or Letters of Administration with Will annexed.

For every probate when the personal estate is sworn to be under 100*l.*, or any sum less than 100*l.*..... £ s. d.
0 1 0

For every probate when the personal estate is of the value of 100*l.* and under 4000*l.*, or any sum less than 4000*l.*, a fee of 1*s.* 6*d.* in the pound on the amount of stamp duty payable on such probate.

For every probate when the personal estate is of the value of 4000*l.* and upwards, the following fees:—

If the personal estate is sworn to be—

Under the value of	...£5000	.....	4	15	0
"	6000	.....	5	0	0
"	7000	.....	5	5	0
"	8000	.....	5	10	0
"	9000	.....	5	15	0
"	10,000	.....	6	0	0
"	12,000	.....	6	5	0
"	14,000	.....	6	10	0
"	16,000	.....	6	17	6
"	18,000	.....	7	5	0
"	20,000	.....	7	12	6
"	25,000	.....	8	2	6
"	30,000	.....	8	15	0
"	35,000	.....	9	7	6
"	40,000	.....	10	6	3
"	45,000	.....	11	5	0
"	50,000	.....	12	8	9
"	60,000	.....	13	2	6
"	70,000	.....	15	0	0
"	80,000	.....	16	17	6
"	90,000	.....	18	15	0
"	100,000	.....	20	12	6
"	120,000	.....	21	11	8
"	140,000	.....	23	8	9
"	160,000	.....	25	6	3
"	180,000	.....	27	3	9
"	200,000	.....	29	1	3
"	250,000	.....	30	18	9
"	300,000	.....	35	12	6
"	350,000	.....	40	6	3

	£	s.	d.
Under the value of...£400,000	41	17	6
" 500,000	43	8	9
" 600,000	46	6	8
" 700,000	49	13	9
" 800,000	52	16	8
" 900,000	55	18	9
" 1,000,000	59	1	8
" Above 1,000,000	62	8	9
For registering and collating wills, of three folios of ninety words each, or under ...	0	4	6
If above three folios of ninety words each, per folio	0	1	6
In cases of probate for Queen's pay or prize money, the effects being under 100 <i>l.</i> , without reference to the length of the will	0	4	6
For engrossing and collating a will for a double, or duplicate, or triplicate, or litigated, or cessate probate, if the will is four folios of ninety words each or under, including parchment	0	6	0
If above four folios of ninety words each, per folio, including parchment,	0	1	6
For every double or cessate probate, when the personal estate is under 450 <i>l.</i> or any smaller sum, the same fee as on the first probate.			
For every double or cessate probate, when the personal estate is of the value of 450 <i>l.</i> or upwards	0	12	6
For every duplicate and triplicate probate, when the personal estate is under 450 <i>l.</i> or any smaller sum, the same fee as on the first probate.			
For every duplicate and triplicate probate, when the personal estate is of the value of 450 <i>l.</i> and upwards	0	12	6
For engrossing, exemplifying and collating a will of four folios of ninety words each or under, including parchment	0	6	0
If above four folios of ninety words each, per folio, including parchment	0	1	6
For every exemplification of probate ...	1	1	0
<i>Letters of Administration.</i>			
For every grant of letters of administration, when the personal estate is sworn to be under 100 <i>l.</i> , or any sum less than 100 <i>l.</i> , a fee of	0	1	0

NON-CONTENTIOUS BUSINESS.

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For every grant of letters of administration, when the personal estate is of the value of 100*l*. and under 2000*l*., or any sum less than 2000*l*., a fee of 1*s*. 6*d*. in the pound on the amount of stamp duty payable on such letters of administration.

For every grant of letters of administration, when the personal estate is of the value of 2000*l*. and upwards, the following fees :
If the personal estate is sworn to be—

	£	s.	d.
Under the value of ...£3000	4	18	9
" 4000	4	17	6
" 5000	5	5	0
" 6000	5	12	6
" 7000	6	0	0
" 8000	6	7	6
" 9000	6	15	0
" 10,000	7	2	6
" 12,000	7	10	0
" 14,000	7	17	6
" 16,000	8	8	9
" 18,000	9	0	0
" 20,000	9	11	3
" 25,000	9	16	3
" 30,000	11	5	0
" 35,000	12	3	9
" 40,000	13	11	3
" 45,000	15	0	0
" 50,000	16	7	6
" 60,000	17	16	3
" 70,000	20	12	6
" 80,000	23	8	9
" 90,000	26	5	0
" 100,000	29	1	3
" 120,000	30	9	6
" 140,000	33	5	9
" 160,000	36	2	0
" 180,000	38	18	3
" 200,000	41	14	6
" 250,000	44	10	9
" 300,000	46	17	6
" 350,000	49	4	6
" 400,000	51	11	3
" 500,000	53	18	3
" 600,000	58	12	0
" 700,000	63	5	9
" 800,000	67	19	6
" 900,000	72	13	3
" 1,000,000	77	7	0
" Above 1,000,000	82	0	9

For every duplicate and triplicate letters of administration when the personal estate is under 800*l.* or any sum less than 800*l.*, the same fee as on the first grant of letters of administration.

For every duplicate and triplicate letters of administration when the personal estate is of the value of 800*l.* and upwards ... 0 12 6

For every exemplification of letters of administration ... 1 1 0

For every grant of letters of administration with will annexed de bonis non or cessate when the personal estate is under 450*l.* or any smaller sum, the same fee as on the first grant.

For every grant of letters of administration with will annexed de bonis non or cessate, when the personal estate is of the value of 450*l.* and upwards ... 0 12 6

For engrossing and collating a will for a grant of letters of administration with will annexed de bonis non or cessate, if the will is four folios of ninety words each or under, including parchment ... 0 6 0

If above four folios of ninety words each, per folio, including parchment ... 0 1 6

For every grant of letters of administration de bonis non or cessate, when the personal estate is under 800*l.* or any smaller sum, the same fee as on the first grant.

For every grant of letters of administration de bonis non or cessate, when the personal estate is of the value of 800*l.* and upwards ... 0 12 6

For every special or limited grant of probate or letters of administration with or without will annexed, in addition to the ordinary fees, as under:

If the personal estate is under the value of 20*l.*, 1*s.* per folio of 90 words each on the bond, on the act, and on the grant of probate or letters of administration.

If the personal estate is of the value of 20*l.* and upwards, 2*s.* per folio of ninety words each on the bond, on the act, and on the grant of probate or letters of administration.

NON-CONTENTIOUS BUSINESS.

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	£	s.	d.
For articles entered into by administrators to pay creditors <i>pro rata</i> , per folio of ninety words each	0	2	0
For the bond for the performance of the articles, per folio of ninety words ...	0	2	0
For noting on the grant of letters of administration with or without will annexed, and on the act, that additional security has been given	0	5	0
For every certificate that additional security has been given	0	1	0
For every search for will or grant of letters of administration or any other document filed in the principal registry, including the looking up and inspecting an original will before the same is registered, or a registered copy of a will or an administration act	0	1	0
For every third will or administration act looked up in addition to the above ...	0	1	0
For looking up and inspecting an original will after the same is registered in addition to the search	0	1	0
For looking up and producing any document filed in the registry other than an original will or administration act ...	0	1	0
For every office copy or extract of a record, will, or probate, or administration act, or other document filed in the principal registry, if five folios of 90 words or under	0	2	6
If exceeding five folios of ninety words per folio	0	0	6
If the will or other document is 200 years old and five folios of 90 words or under...	0	5	0
If exceeding five folios of ninety words per folio	0	0	9
If the office copy of a will or any part of a will or other document is required to be made fac simile, and such will or part of a will or other document is five folios of ninety words in length or under...	0	8	6
If exceeding five folios of ninety words, per folio	0	0	9
For collating a probate or copy of a will or other document left in place of the original, if twenty folios in length or under	0	5	0
If exceeding twenty folios, for every additional two folios	0	0	8

	£	s.	d.
If a copy is required to be printed, for every eight folios of ninety words (in addition to a manuscript copy for the printer, at 6d. per folio of ninety words)...	0	5	0
For every copy of a will made for the Inland Revenue Office, per folio ...	0	0	6
For every abstract of an administration act for the Inland Revenue Office ...	0	3	3
For every attendance with any book or original document in any of the courts of law or equity in London or Westminster, or elsewhere within three miles of the principal registry, except in the Court of Probate and the Court for Divorce and Matrimonial Causes at Westminster ...	1	1	0
For second and each subsequent attendance in any of the courts of law or equity in London or Westminster, except as aforesaid, in the same term or sittings after term ...	0	10	6
For each day's attendance with any book or original document in any of the courts of law or equity, or elsewhere beyond the distance of three miles from the principal registry, exclusive of travelling expenses ...	1	1	0
For every receipt for a document or documents delivered out of the principal registry ...	0	1	0
For the entry of every caveat ...	0	1	0
For each notice of such caveat to the district registrars ...	0	1	0
For every warning to a caveat issuing from the principal registry ...	0	5	0
For messengers' attendance with warning to caveat within three miles of the principal registry ...	0	2	6
For a search for a will or grant of letters of administration, and for reading the will when the party applying is unable or unwilling to search for or read the same, such a reasonable fee as shall be agreed upon at the time.			
For every search by an officer of the principal registry in order to ascertain whether any probate or grant of letters of administration has already issued, or any application has been made for a grant of probate or administration as under:—			
For every year after the year in which the deceased died. ...	0	0	6

NON-CONTENTIOUS BUSINESS. cxiii

In case it be requisite to extend the search to one or more district registries, a similar additional fee for the search in each of such district registries.	£	s.	d.
For filing affidavit for the Inland Revenue-office on granting probate on letters of administration for Queen's pay or prize money	0	1	0
For filing every other affidavit and other document brought into and deposited in the principal registry, except the oaths for executors, administrators or administrators with the will, the first administration bond and the testamentary papers in respect of which probate or administration with will annexed is granted ...	0	2	6
For every receipt for documents left in the principal registry in order to obtain a grant of probate or letters of administration with or without will annexed ...	0	1	0
For depositing every will of a person deceased in the principal registry for safe custody	0	10	0
For depositing every will of a living person for safe custody, including the deposit receipt	1	1	0
For taxing every bill of costs, inclusive of the registrar's certificate	0	5	0
For every oath administered by the registrars	0	1	0
For transfer of an articulated clerk	1	0	0

FEES

To be taken for their own use by Proctors, Solicitors, and Attorneys practising in the Court of Probate and in the District Registries thereof, in Non-Contentious Business.

Fees of Letters of Administration with Will annexed.

In addition to the fees for attendance on execution of the bond, if the effects are—	£	s.	d.
5 <i>l.</i> and under 20 <i>l.</i>	0	0	10
20 <i>l.</i> and under 100 <i>l.</i>	0	1	8
100 <i>l.</i> and upwards	0	3	4

Fees of Letters of Administration.

Estates sworn under.	Oath of Administrator and attendance on his being sworn and on execution of the bond.	Affidavit for Inland Revenue and attendance on Administrator being sworn.	Letters of Administration under seal.	Extracting.	Clark.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5..	0 2 6	0 2 6	0 1 0	0 1 0	—
20..	0 3 4	0 2 6	0 1 0	0 3 4	0 1 0
50..	0 5 0	0 5 0	0 1 6	0 4 8	0 2 0
100..	0 6 8	0 6 8	0 2 0	0 6 8	0 2 0
200..	0 10 0	0 6 8	0 4 6	0 6 8	0 2 0
300..	0 13 4	0 10 0	0 12 0	0 6 8	0 2 0
450..	0 13 4	0 10 0	0 16 6	0 6 8	0 2 0
600..	0 13 4	0 10 0	1 2 6	0 6 8	0 2 0
800..	0 13 4	0 10 0	1 13 0	0 6 8	0 2 0
1,000..	0 13 4	0 10 0	2 5 0	0 6 8	0 5 0
1,500..	0 13 4	0 10 0	3 7 8	0 6 8	0 5 0
2,000..	0 13 4	0 10 0	4 10 0	0 13 4	0 5 0
3,000..	0 13 4	0 10 0	4 13 9	0 13 4	0 7 6
4,000..	0 13 4	0 10 0	4 17 6	0 13 4	0 7 6
5,000..	0 13 4	0 10 0	5 5 0	0 13 4	0 7 6
6,000..	0 13 4	0 10 0	5 12 6	0 13 4	0 7 6
7,000..	0 13 4	0 10 0	6 0 0	0 13 4	0 7 6
8,000..	0 13 4	0 10 0	6 7 6	0 13 4	0 7 6
9,000..	0 13 4	0 10 0	6 15 0	0 13 4	0 7 6
10,000..	0 13 4	0 10 0	7 2 6	0 13 4	0 7 6
12,000..	0 13 4	0 10 0	7 10 0	0 13 4	0 7 6
14,000..	0 13 4	0 10 0	7 17 6	0 13 4	0 7 6
16,000..	0 13 4	0 10 0	8 8 9	0 13 4	0 7 6
18,000..	0 13 4	0 10 0	9 0 0	0 13 4	0 7 6
20,000..	0 13 4	0 10 0	9 11 3	0 13 4	0 7 6
25,000..	0 13 4	0 10 0	9 16 3	0 13 4	0 7 6
30,000..	0 13 4	0 10 0	11 5 0	0 13 4	0 7 6
35,000..	0 13 4	0 10 0	12 3 9	0 13 4	0 7 6
40,000..	0 13 4	0 10 0	13 11 3	0 13 4	0 7 6
45,000..	0 13 4	0 10 0	15 0 0	0 13 4	0 7 6
50,000..	0 13 4	0 10 0	16 7 6	0 13 4	0 7 6
60,000..	0 13 4	0 10 0	17 16 3	0 13 4	0 7 6
70,000..	0 13 4	0 10 0	20 12 6	0 13 4	0 7 6
80,000..	0 13 4	0 10 0	23 8 9	0 13 4	1 1 0
90,000..	0 13 4	0 10 0	26 5 0	0 13 4	1 1 0
100,000..	0 13 4	0 10 0	29 1 3	0 13 4	1 1 0
120,000..	0 13 4	0 10 0	30 9 6	0 13 4	1 1 0
140,000..	0 13 4	0 10 0	33 5 9	0 13 4	1 1 0
160,000..	0 13 4	0 10 0	36 2 0	0 13 4	1 1 0
180,000..	0 13 4	0 10 0	38 18 3	0 13 4	1 1 0
200,000..	0 13 4	0 10 0	41 14 6	0 13 4	1 1 0
250,000..	0 13 4	0 10 0	44 10 9	0 13 4	1 1 0
300,000..	0 13 4	0 10 0	46 17 6	0 13 4	1 1 0
350,000..	0 13 4	0 10 0	49 4 6	0 13 4	1 1 0
400,000..	0 13 4	0 10 0	51 11 3	0 13 4	1 1 0
500,000..	0 13 4	0 10 0	53 18 3	0 13 4	1 1 0
600,000..	0 13 4	0 10 0	58 12 0	0 13 4	1 1 0
700,000..	0 13 4	0 10 0	63 5 9	0 13 4	1 1 0
800,000..	0 13 4	0 10 0	67 19 6	0 13 4	1 1 0
900,000..	0 13 4	0 10 0	72 13 3	0 13 4	1 1 0
1,000,000..	0 13 4	0 10 0	77 7 0	0 13 4	1 1 0
Above that..					
sum	0 13 4	0 10 0	82 0 9	0 13 4	1 1 0

Fees of Probates.

Effects sworn under.	Oath of Executors and attendance on the party being sworn.	Affidavit for the Inland Revenue Office and attendance on the party sworn.	Engrossing and collating the will, three folios of ninety words or under.	Probate under seal.	Extraditing.	Clerk's fee.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 3 6	0 3 6	0 4 6	0 1 0	0 1 0	—
10	0 2 6	0 3 6	0 4 6	0 1 0	0 3 4	0 1 0
20	0 3 0	0 5 0	0 4 6	0 1 0	0 6 8	0 3 0
30	0 6 8	0 6 8	0 4 6	0 3 0	0 6 8	0 3 0
40	0 10 0	0 10 0	0 4 6	0 7 6	0 6 8	0 3 0
50	0 10 0	0 10 0	0 4 6	0 13 0	0 6 8	0 3 0
60	0 10 0	0 10 0	0 4 6	0 16 6	0 6 8	0 3 0
70	0 10 0	0 10 0	0 4 6	1 2 6	0 6 8	0 3 0
80	0 10 0	0 10 0	0 4 6	1 13 0	0 6 8	0 3 0
90	0 10 0	0 10 0	0 4 6	2 5 0	0 6 8	0 3 0
100	0 10 0	0 10 0	0 4 6	3 0 0	0 6 8	0 3 0
110	0 10 0	0 10 0	0 4 6	3 15 0	0 13 4	0 5 0
120	0 10 0	0 10 0	0 4 6	4 10 0	0 13 4	0 5 0
130	0 10 0	0 10 0	0 4 6	4 15 0	0 13 4	0 7 6
140	0 10 0	0 10 0	0 4 6	5 0 0	0 13 4	0 7 6
150	0 10 0	0 10 0	0 4 6	5 5 0	0 13 4	0 7 6
160	0 10 0	0 10 0	0 4 6	5 10 0	0 13 4	0 7 6
170	0 10 0	0 10 0	0 4 6	5 15 0	0 13 4	0 7 6
180	0 10 0	0 10 0	0 4 6	6 0 0	0 13 4	0 7 6
190	0 10 0	0 10 0	0 4 6	6 5 0	0 13 4	0 7 6
200	0 10 0	0 10 0	0 4 6	6 10 0	0 13 4	0 7 6
210	0 10 0	0 10 0	0 4 6	6 17 6	0 13 4	0 7 6
220	0 10 0	0 10 0	0 4 6	7 5 0	0 13 4	0 7 6
230	0 10 0	0 10 0	0 4 6	7 12 6	0 13 4	0 7 6
240	0 10 0	0 10 0	0 4 6	8 2 6	0 13 4	0 7 6
250	0 10 0	0 10 0	0 4 6	8 15 0	0 13 4	0 7 6
260	0 10 0	0 10 0	0 4 6	9 7 6	0 13 4	0 7 6
270	0 10 0	0 10 0	0 4 6	10 6 3	0 13 4	0 7 6
280	0 10 0	0 10 0	0 4 6	11 5 0	0 13 4	0 7 6
290	0 10 0	0 10 0	0 4 6	12 3 9	0 13 4	0 7 6
300	0 10 0	0 10 0	0 4 6	13 2 6	0 13 4	0 7 6
310	0 10 0	0 10 0	0 4 6	15 0 0	0 13 4	0 7 6
320	0 10 0	0 10 0	0 4 6	16 17 6	0 13 4	1 1 0
330	0 10 0	0 10 0	0 4 6	18 15 0	0 13 4	1 1 0
340	0 10 0	0 10 0	0 4 6	20 12 6	0 13 4	1 1 0
350	0 10 0	0 10 0	0 4 6	21 11 8	0 13 4	1 1 0
360	0 10 0	0 10 0	0 4 6	23 8 9	0 13 4	1 1 0
370	0 10 0	0 10 0	0 4 6	25 6 3	0 13 4	1 1 0
380	0 10 0	0 10 0	0 4 6	27 3 9	0 13 4	1 1 0
390	0 10 0	0 10 0	0 4 6	29 1 3	0 13 4	1 1 0
400	0 10 0	0 10 0	0 4 6	30 18 9	0 13 4	1 1 0
410	0 10 0	0 10 0	0 4 6	35 12 6	0 13 4	1 1 0
420	0 10 0	0 10 0	0 4 6	40 6 3	0 13 4	1 1 0
430	0 10 0	0 10 0	0 4 6	41 17 6	0 13 4	1 1 0
440	0 10 0	0 10 0	0 4 6	43 8 9	0 13 4	1 1 0
450	0 10 0	0 10 0	0 4 6	46 6 3	0 13 4	1 1 0
460	0 10 0	0 10 0	0 4 6	49 13 9	0 13 4	1 1 0
470	0 10 0	0 10 0	0 4 6	52 16 3	0 13 4	1 1 0
480	0 10 0	0 10 0	0 4 6	55 18 9	0 13 4	1 1 0
490	0 10 0	0 10 0	0 4 6	59 1 3	0 13 4	1 1 0
500	0 10 0	0 10 0	0 4 6	62 3 9	0 13 4	1 1 0
sum	0 10 0	0 10 0	0 4 6	62 3 9	0 13 4	1 1 0

Above that

For engrossing and collating the will if more than three folios of ninety words each, per folio, 1s. 6d.

Fees of Double or Cessate Probates.

<i>If the effects are sworn under.</i>	<i>Attendance in the Registry and looking up Will and bespeaking engrossment.</i>	<i>Oath of the executor and attendance on his being sworn.</i>	<i>Affidavit for In. Rev. Office and attendance on the executor being sworn.</i>	<i>Drawing & copying statement in support of application for duty-paid stamp.</i>	<i>Attending the Commissioners of Stamps and procuring the duty-paid stamp.</i>	<i>Double Probate under seal.</i>	<i>Extracting.</i>	<i>Clerk.</i>
£	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
500..	2 4	2 6	2 6	—	—	1 0	1 0	—
2000..	2 4	2 6	2 6	—	—	1 0	3 4	1 0
1000..	6 8	5 0	5 0	6 8	13 4	1 0	6 8	2 0
2000..	6 8	6 8	6 8	6 8	13 4	3 0	6 8	2 0
3000..	6 8	10 0	10 0	6 8	13 4	7 6	6 8	2 0
4500..	6 8	10 0	10 0	6 8	13 4	12 0	6 8	2 0
6000..	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
8000..	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
10000..	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
15000..	6 8	10 0	10 0	10 0	13 4	12 6	6 8	5 0
20000..	6 8	10 0	10 0	10 0	13 4	12 6	6 8	5 0
30000..	6 8	10 0	10 0	10 0	13 4	12 6	13 4	5 0
40000..	6 8	10 0	10 0	10 0	13 4	12 6	13 4	5 0
50000..	6 8	10 0	10 0	10 0	13 4	12 6	13 4	7 6
Above 50000..	The fees to be taken are the same as above, except the Clerk's fee, which, if the effects are of the value of 70,000 <i>l.</i> or upwards, is 1 <i>l.</i> 1 <i>s.</i>							

Exemplification of Probate or Letters of Administration with or without Will annexed.

	£	s.	d.
Attending in the registry, looking up the grant of probate and original will or grant of administration, and bespeaking exemplification	0	6	8
Exemplification under seal and stamp	1	1	0
Extracting	0	6	8
Clerks	0	2	6

Duplicate and Triplicate Probates or Letters of Administration with or without Will annexed.

Attending in the registry, looking up the will, and bespeaking duplicate or triplicate probate and engrossment	0	6	8
Drawing and copying statement in support of application to the Inland Revenue Office for the duty-paid stamp	0	10	0
Attending at the Inland Revenue Office and procuring the duty-paid stamp	0	13	4

Duplicate or triplicate probate or letters of administration, with or without the will annexed, if the personal estate is under 450*l.*, or any smaller sum ... } The same fee as on the first grant.

If the personal estate is of the value of 450*l.* and upwards ... £0 12 6
 Extracting ... 0 6 8
 Clerks ... 0 2 6

Letters of Administration with or without Will annexed de bonis non or Cessate.

If the effects are sworn under.		Attending in Registry, looking up and perusing will, & taking account of former grant.		Oath of the Administrator and attendance on his being sworn, and on execution of the bond.		Affidavit for Inland Revenue Office and attendance on administrator being sworn.		Drawing & copying statement in support of application to In. Rev. Office for duty-paid stamp.		Attending at the Inland Revenue Office and procuring the duty-paid stamp.		De bonis administration with Will under seal and duty-paid stamp.		Extracting.		Clerks.		
£	s. d.	£	s. d.	£	s. d.	£	s. d.	£	s. d.	£	s. d.	£	s. d.	£	s. d.	£	s. d.	
5	6 8	5	0 2	6	— —	6	— —	—	— —	1	0 1	0	— —	0	— —	—	— —	
20	6 8	5	0 2	6	— —	6	— —	—	— —	1	0 3	4	1 0	—	— —	—	— —	
50	6 8	6	8 5	0	— —	6	— —	—	— —	1	6 4	8	2 0	—	— —	—	— —	
100	6 8	10	0 6	8	5 0	6	8	13	4 3	0	6	8	2 0	—	— —	—	— —	
200	6 8	13	4 6	8	6 8	13	4	4	6	6	8	6	8	2 0	—	— —	—	— —
300	6 8	16	8 10	0	6 8	13	4	12	6	6	8	6	8	2 0	—	— —	—	— —
450	6 8	16	8 10	0	6 8	13	4	12	6	6	8	6	8	2 0	—	— —	—	— —

Above 450 The fees to be taken are the same as above, except the extracting fee, which, if the effects are 1500*l.* and upwards, is 13*s.* 4*d.*, and the clerk's fee, which, if the effects are 600*l.* and upwards, is 5*s.*

Probates, Special or Limited.

	£	s.	d.
Consulting fee ...	0	6	8
Affidavit for Inland Revenue Office and attendance on the executor being sworn:— The same fee as on ordinary probates.			
Drawing special oath of executor, per folio of seventy-two words ...	0	1	0
Fair copy of the oath for the registrar, per folio of seventy-two words ...	0	0	4
Attending the registrar thereon ...	0	13	4
Engrossing same, per folio of 72 words ...	0	0	4
Attendance on the executor being sworn ...	0	6	8
Engrossing and collating the will three folios of 90 words or under } Special or limited probate, under } The same fees as on ordinary probates.			
seal ...			
Extracting ...			
Clerk ...			

Letters of Administration, Special or Limited.

	£	s.	d.
Consulting fee... ..	0	6	8
Perusing and abstracting deeds or other instruments, when necessary, at per folio of ninety words	0	0	4
Proxy of nomination... ..	0	13	4
Affidavit for Inland Revenue Office and attendance on the administrator being sworn:—The same fees as on ordinary grants of letters of administration.			
Drawing special oath of the administrator, per folio of seventy-two words	0	1	0
Fair copy of the oath for the registrar to peruse, per folio of seventy-two words	0	0	6
Attending the registrar thereon	0	13	4
Engrossing same, per folio of 72 words	0	0	4
Attendance when the administrator was sworn, and on execution of the bond	The same fees as on ordinary grants of letters of administration.		
Letters of administration under seal and stamp			
Extracting			
Clerks			

Office Copies of, or Extracts from, Records, Wills and other Documents.

For attendance in the registry for searching for a record, will, or other document, or for a grant of probate, or letters of administration, with or without a will annexed, for the first five years, or any period less than five years, including the ordering of a copy	0	5	0
For every five years after the first five years	0	8	4
For the perusal of a record, will or other document, when necessary, for the purpose of ordering extracts or for any other purpose, including the ordering of extracts, per folio of ninety words	0	0	4
For collating an office copy or extract of a record, will, or other document, with the original, including extracting fee, per folio of ninety words	0	0	2
For collating an office copy of the Act on granting probate or administration with the original entry thereof, including extracting fee	0	1	0

NON-CONTENTIOUS BUSINESS. cxix

Caveats.

For attendance in the registry and entering	£	s.	d.
caveat	0	6	8
For attendance in the registry and giving			
instructions for warning caveators to enter			
an appearance	0	6	8

Affidavits other than the Affidavits and Oaths included in the Fees of Probate and Letters of Administration and Declarations of Personal Estate and Effects.

For taking instructions for every affidavit			
or declaration of personal estate and effects	0	6	8
For drawing and fair copy of the same, per			
folio of seventy-two words	0	1	0
For every copy thereof, per folio of 72			
words	0	0	4

Instruments of Renunciation and Consent, Letters of Attorney and other Documents prepared by Proctors, Solicitors, or Attorneys.

For drawing and fair copy of every instru-			
ment of renunciation, consent, letter of			
attorney, or other document prepared as			
above, per folio of seventy-two words ...	0	1	0
For every fair copy, per folio of seventy-			
two words	0	0	4

WILLS AMENDMENT ACT, 1852.

15 VICT. CAP. 24, SECT. 1.

Where by an act passed in the first year of the reign of Her Majesty Queen Victoria, intituled "An Act for the Amendment of the Laws with respect to Wills," it is enacted, that no will shall be valid unless it shall be signed at the foot or end thereof by the testator, or by some other person in his presence, and by his direction: every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid within the said enactment, as explained by this act, if the signature shall be so placed at or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will, and that no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the testimonium clause or of the clause of attestation, or shall follow or be after or under the clause of attestation, either with or without a blank space intervening, or shall follow or be after, or under, or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will shall be written above the signature, or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature under the said act or this act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made.



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